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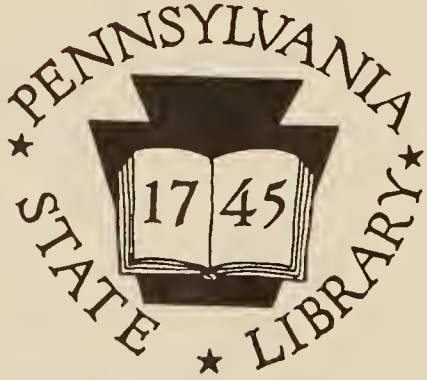

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World Peace Foundation Pamphlets

VOLUME IX
1926

WORLD PEACE FOUNDATION
40 MT. VERNON STREET, BOSTON

World Peace Foundation

Boston, Massachusetts

*FOUNDED IN 1910 BY EDWIN GINN

The corporation is constituted for the purpose of educating the people of all nations to a full knowledge of the waste and destructiveness of war, its evil effects on present social conditions and on the well-being of future generations, and to promote international justice and the brotherhood of man; and, generally, by every practical means to promote peace and good will among all mankind. — *By-laws of the Corporation.*

It is to this patient and thorough work of education, through the school, the college, the church, the press, the pamphlet and the book, that the World Peace Foundation addresses itself. — Edwin Ginn.

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CONTENTS

No. 1, THE LOCARNO CONFERENCE, OCTOBER 5–16, 1925

PAGE

Map of Rhineland Area 5

The Locarno Settlement 7
- The "Spirit of Locarno" 8
- Postwar Rhineland tension 10
- "Security" negotiations 12
- Influence of League of Nations 14
- Germany's admission to the League 16
- History of the negotiations 19
- United States held aloof 21
- Connection with League of Nations 22
- The network of documents 24
- The Rhineland Guaranty 25
- Pacific settlement of Rhine questions 25
- Complete pacific settlement 26
- Germany's eastern border 29
- The purpose of initialing 30

Documentary Material:

I. Preliminary exchanges of views 33
1. Memorandum communicated on February 9, 1925, by the German Ambassador in Paris to M. Herriot, President of the Council and Minister for Foreign Affairs 33
2. Memorandum handed by the President of the Council and Minister for Foreign Affairs to Herr von Hoesch, German Ambassador in Paris, on February 20, 1925 34
3. Note from the French Government to the German Government handed to Herr Stresemann by the French Ambassador at Berlin on June 16, 1925 35
4. Reply of the German Government to the note handed to Herr Stresemann by the French Ambassador at Berlin on June 16, 1925 . 41
5. Note of the French Minister of Foreign Affairs in reply to the German response, August 24, 1925 45
6. German reply of August 27, 1925, to the French note of August 24 . 49
7. Invitation to the German Government to meet in conference, transmitted on behalf of Belgium, France and Great Britain, by the Ambassadors at Berlin, September 15, 1925 50
8. Aide mémoire delivered to the British and French ministers of foreign affairs by the German Ambassadors at London and Paris, respectively 51
9. French acknowledgment of the German aide mémoire 51
10. British acknowledgment of the German aide mémoire 52
11. Belgian declarations to the German minister at Brussels, September 26, 1925 53

229402

PAGE

II. The Conference of Locarno, October 5–16, 1925 54
No. 1. Final Protocol of the Locarno Conference 54
Annex A. Treaty of Mutual Guaranty between Germany, Belgium, France, Great Britain and Italy 55
Annex B. Arbitration convention between Germany and Belgium 60
Annex C. Arbitration convention between Germany and France . 66
Annex D. Arbitration treaty between Germany and Poland . . 66
Annex E. Arbitration treaty between Germany and Czechoslovakia 72
Annex F. Collective note to Germany regarding Article 16 of the Covenant of the League of Nations 72
No. 2. Treaty between France and Poland 73
No. 3. Treaty between France and Czechoslovakia 74

No. 2, THE WORK OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE DURING FOUR YEARS, by Manley O. Hudson, Bemis Professor of International Law, Harvard Law School

PAGE

States Which Have Signed the Protocol of the Permanent Court of International Justice 80
States Which Have Signed the Optional Clause Annexed to the Protocol 81
Chronology of the Permanent Court 82
America's Relation to the Court 83
Judges of the Permanent Court of International Justice 84
Judgments and Opinions of the Permanent Court of International Justice:
First Advisory Opinion (July 31, 1922) 85
Second Advisory Opinion (August 12, 1922) 87
Third Advisory Opinion (August 12, 1922) 88
Fourth Advisory Opinion (February 7, 1923) 89
Fifth Advisory Opinion (July 23, 1923) 93
First Judgment (August 17, 1923) 95
Sixth Advisory Opinion (September 10, 1923) 98
Seventh Advisory Opinion (September 15, 1923) 100
Eighth Advisory Opinion (December 6, 1923) 103
Second Judgment (August 30, 1924) 106
Ninth Advisory Opinion (September 4, 1924) 110

PAGE

Third Judgment (September 12, 1924) 113
Tenth Advisory Opinion (February 21, 1925) 116
Fourth Judgment (March 26, 1925) 119
Fifth Judgment (March 26, 1925) 121
Eleventh Advisory Opinion (May 16, 1925) 124
Sixth Judgment (August 25, 1925) 126
Twelfth Advisory Opinion (November 21, 1925) 128

Nos. 3–4, SIXTH YEARBOOK OF THE LEAGUE OF NATIONS. RECORD OF 1925

PAGE

What the League of Nations is 137

Part I. Organization 142

I. Members of the League 142
The German application 143
Memorandum by the German Government 149
Delegates to the League of Nations 155

II. Nonmembers of the League 157

III. Organs 159
1. The Sixth Assembly 159
2. The Council 162
Members in interest 163
Competence in disputes 163
3. The Secretariat 166
General organization 166
Special organizations 167
Internal services 167
4. Finances of the League 168
Scale of allocation of the expenses of the League 170
Assembly Hall 171

IV. Development of International Agreement 173
Protocol for Pacific Settlement 173
Locarno Conference 183
Committee on Progressive Codification of International Law . 186

Part II. Work of the League of Nations 190

I. Direct Relations of States 190
1. Pacific settlement of disputes 190
Expulsion of the Œcumenical Patriarch 190
Frontier between Iraq and Turkey 191
The Bulgaro-Greek incident 201
Upper Silesian social insurance funds 217
Distribution of the Ottoman Public Debt 219

PAGE

2. Financial Reconstruction 220
Austria 220
Hungary 228
Greek refugee settlement 230

II. Duties Under the Covenant 232
1. Reduction of Armament 232
Conference for the Control of the International Trade in Arms, Munitions and Implements of War 232
Coordination Commission 238
Preparatory Commission for the Disarmament Conference 239
Private manufacture of arms 243
Exercise of the right of investigation 244
2. Mandates 246
Application of international conventions 247
Annual reports 248
Slavery Commission 253

III. Cooperation of States Under the Covenant 258
1. Health Organization 258
Epidemiological Service 258
Interchange of public health personnel 259
Subjects studied:
Sleeping Sickness 262
Mortality statistics 263
Malaria 263
Proposals for further work 264
2. Economic and Financial Organization 266
Economic Committee 266
Unfair competition 267
Economic crises and unemployment 269
Import and export prohibitions and restrictions 271
False customs declarations 272
Treatment of foreign nationals 272
Preparatory committee on statistics 273
General Economic Conference 274
Financial Committee 277
Double taxation and tax evasion 277
Esthonian economic reform 281
Danzig municipal loan 283
3. Organization for Communications and Transit 285
Danube and Rhine navigation 285
Danube jurisdiction 288
Tonnage measurement in inland navigation 289
Passport conference 290
Reform of the calendar 291
Motor vehicles 291
Telegraphic questions 293
Buoyage and lighting of coasts 294
4. Committee on Intellectual Cooperation 295
International Institute 296
Subcommittee on Arts and Letters 297
International University Information Office 298
Instruction of youth 299

PAGE

5. Advisory Committee on Traffic in Women and Protection of Children 302
6. Opium 306
Advisory Committee 306
Persian export 308
Annual reports from Governments 309
Certificate system 309
Narcotic offenses treaty 310
Limitation of production 310
Inquiry Commission 311
7. Mitigation of Suffering 312
International Relief Union 312
Refugees 313
Armenian refugee loan 314

'art III. Duties Under Treaties 316

I. Protection of Minorities 316
German-Polish convention 317
Bulgaro-Greek minorities 317
Greek minority in Constantinople and Turkish minority in Western Thrace 319
Hungarian farmers in Rumania 320
Polish minority in Lithuania 324
Jewish minority in Hungary 325

II. Administrative Functions 327
1. Territory of the Saar Basin 327
2. Free City of Danzig 329

No. 5, THE MEXICAN REVOLUTION AND THE UNITED STATES, 1910–1926, by Charles Wilson Hackett, Professor of Latin American History, University of Texas, visiting Lecturer on Latin American History and Economics, Harvard University, 1925–26

PAGE

Socio-Economic Revolution of 1910 339
Delays in Securing Agrarian Reforms, 1910–1915 342
The Provisional Agrarian Law of 1915 344
Reform Program in Art. 27, Constitution of 1917 346
Enforcement of Agrarian Provisions of Art. 27 347
Enabling Decrees Nationalizing Subsoil Deposits 349
Basis of Diplomatic Impasse, 1920–1923 351
Mexican Counter-Proposals 353
Tension Increases 355
Mexico Defends Stand in Controversy 357

PAGE

Final Diplomatic Exchanges 360
Obregón's Accomplishments and Recognition 362
The United States–Mexican Commission of 1923 365
Agrarian Discussions 366
Nationalization of Subsoil Deposits 371
Claims Conventions 374
Cordial Relations, September, 1923, to November, 1925 375
Bases for New Diplomatic Controversies, 1925 375
Controversy over the Alien Land Bill 377
Protest against Petroleum Law 382
Development of Controversies over Alien Land and Petroleum Laws 383
Termination of the Diplomatic Controversies 390
Conclusions regarding Controversies over Alien Land and Petroleum Laws 395
Present Status (May, 1926) of Alien Land and Petroleum Laws . 396
Enforcement of Religious and Educational Provisions of Constitutional Art. 27 398
Conclusion 400
Documents
1. Land decree issued by First Chief Carranza on January 6, 1915, at Vera Cruz 403
2. Decree requiring foreigners to renounce their national protection when acquiring rights to certain real property in the Republic of Mexico 405
3. Political Constitution of the United States of Mexico, Art. 27 407
4. Attitude of United States toward Mexican jurisdiction over American nationals 412
5. The agrarian problem:
   a. Understandings of the American and Mexican Commissioners, 1923 413
   b. Organic law of Sec. I of Art. 27 of the Constitution 414
   c. Regulations governing the organic law of Sec. I of Art. 27 . . . 417
6. The subsoil and petroleum problem:
   a. Understandings of the American and Mexican Commissioners, 1923 422
   b. Law regulating Art. 27 of the Constitution in the matter of petroleum 425
7. General claims convention between the United States and Mexico . . 431
8. Special claims convention between the United States and Mexico for the settlement of claims of American citizens arising from revolutionary acts in Mexico from November 20, 1910, to May 31, 1920 436
9. Development of religious policy 440

Nos. 6–7, ARBITRATION AND THE UNITED STATES. A SUMMARY OF THE DEVELOPMENT OF PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES WITH SPECIAL REFERENCE TO AMERICAN POLICY

PAGE

I. Pacific Settlement and Public Affairs 451
Significance of policy and of practice 452
Extent of engagements 455

II. Prewar Development 457
Germanic Confederation 457
Normal Latin American policy 458
Protocol 23 of Paris Congress 459
Admission of a non-Christian state 460
Contributions to international law 461
Alabama claims 463
International American Conference 463
First Hague Conference 464
Cases decided by the Permanent Court of Arbitration 468
Matters referred to commissions of inquiry 470
Second Hague Conference 471
Proposed Court of Arbitral Justice 473
International Prize Court 474
Prewar arbitrations 475

III. Record of United States 477
1. The Jay Treaty of 1794 479
The arbitrations under the treaty 481
2. Treaty of Guadalupe Hidalgo, 1848 485
Treaty terms not applied 486
3. Congressional attitude, 1838–1853 487
Foote resolution 488
Report on Underwood resolution 489
4. The *Alabama* claims, 1872 492
5. Congressional resolutions, 1874 494
6. Swiss proposal, 1883 496
7. Anglo-American project, 1897 497
Tribunal for international arbitration 498
Effect of petitions 499
General arbitration treaty 500
The Senate debate 504
Under McKinley Administration 506
Frank hostility in minority report 507
Extensive amendments 508
Text of treaty rejected 509
8. Roosevelt's failure, 1905 513
Invitation to Governments 513
President Roosevelt's attitude 515
Causes of opposition 516
The extremist minority report 517
President Roosevelt's letter 519

PAGE

9. The 1908–09 series of treaties 521
10. President Taft's effort, 1911–12 524
Justiciable questions 526
President led public debate 529
Objections in committee report 530
Root and colleagues oppose majority 531
Senate debates changes 532
11. Treaties for Advancement of Peace, 1913–14 534
Senate action 537
Permanent Commission 540
Treaties not in force 545
12. Central American Court of Justice, 1916 546
Central American Peace Conference 547
Decisions of the Court 548
Court expires by limitation 549
Conference on Central American affairs 550
13. Congressional declaration of policy, 1916 552

IV. Postwar Development 555
"Enforce" peace 555
League system of pacific settlement 556
Choice of method 557
Domestic jurisdiction 558
Mediation overlies system 563
Court provides judicial settlement 565
Judgments 568
Advisory Opinions 568
American adhesion conditional 570
Treaties of conciliation 572
"Arbitration, Security, Reduction of Armaments" 574
Practice of pacific settlement 577
Summary of postwar progress 580

Appendix

Index of Bipartite Arbitration Treaties 587

Chronological Summary 601

Summary by Countries 602

No. 8, AMERICA AND THE PERMANENT COURT OF INTERNATIONAL JUSTICE. II

PAGE

Introduction 613

I. Resolution granting favorable advice and consent of the Senate to the adhesion on the part of the United States to the Protocol of December 16, 1920, with reservations. Agreed to by the Senate, January 27, 1926 615

II. The Secretary of State to the Secretary-General of the League of Nations 617

PAGE

III. Letter dated March 29, 1926, from the Secretary-General of the League of Nations to the Secretary of State of the United States of America 618

IV. The American Chargé d'Affaires at Bern, Alan F. Winslow, to Secretary-General of the League of Nations 621

V. Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice. Final Act of the Conference 623
Annex A. Extract from the Revised Rules of Court of the Permanent Court of International Justice 632
Annex B. Preliminary Draft of a Protocol 634

VI. Permanent Court of International Justice. Protocol of Signature 638
Optional Clause 639
Statute for the Permanent Court of International Justice provided for by Art. 14 of the Covenant of the League of Nations 644

Cumulative Index, Volumes VII–IX, 1924–1926 655

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THE LOCARNO CONFERENCE

OCTOBER 5-16, 1925

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CONTENTS

PAGE

Map of Rhineland Area 5

The Locarno Settlement 7

The "Spirit of Locarno" 8
Postwar Rhineland tension 10
"Security" negotiations 12
Influence of League of Nations 14
Germany's admission to the League 16
History of the negotiations 19
United States held aloof 21
Connection with League of Nations 22
The network of documents 24
The Rhineland Guaranty 25
Pacific settlement of Rhine questions 25
Complete pacific settlement 26
Germany's eastern border 29
The purpose of initialing 30

Documentary Material:

I. Preliminary exchanges of views 33

1. Memorandum communicated on February 9, 1925, by the German Ambassador in Paris to M. Herriot, President of the Council and Minister for Foreign Affairs 33
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3. Note from the French Government to the German Government handed to Herr Stresemann by the French Ambassador at Berlin on June 16, 1925 35
4. Reply of the German Government to the note handed to Herr Stresemann by the French Ambassador at Berlin on June 16, 1925 . 41
5. Note of the French Minister of Foreign Affairs in reply to the German response, August 24, 1925 45
6. German reply of August 27, 1925, to the French note of August 24 . 49
7. Invitation to the German Government to meet in conference, transmitted on behalf of Belgium, France and Great Britain, by the Ambassadors at Berlin, September 15, 1925 50
8. Aide mémoire delivered to the British and French ministers of foreign affairs by the German Ambassadors at London and Paris, respectively 51
9. French acknowledgment of the German aide mémoire 51
10. British acknowledgment of the German aide mémoire 52
11. Belgian declarations to the German minister at Brussels, September 26, 1925 53

PAGE

II. The Conference of Locarno, October 5–16, 1925 54

No. 1. Final Protocol of the Locarno Conference 54

Annex A. Treaty of Mutual Guaranty between Germany, Belgium, France, Great Britain and Italy 55

Annex B. Arbitration convention between Germany and Belgium . 60

Annex C. Arbitration convention between Germany and France . . 66

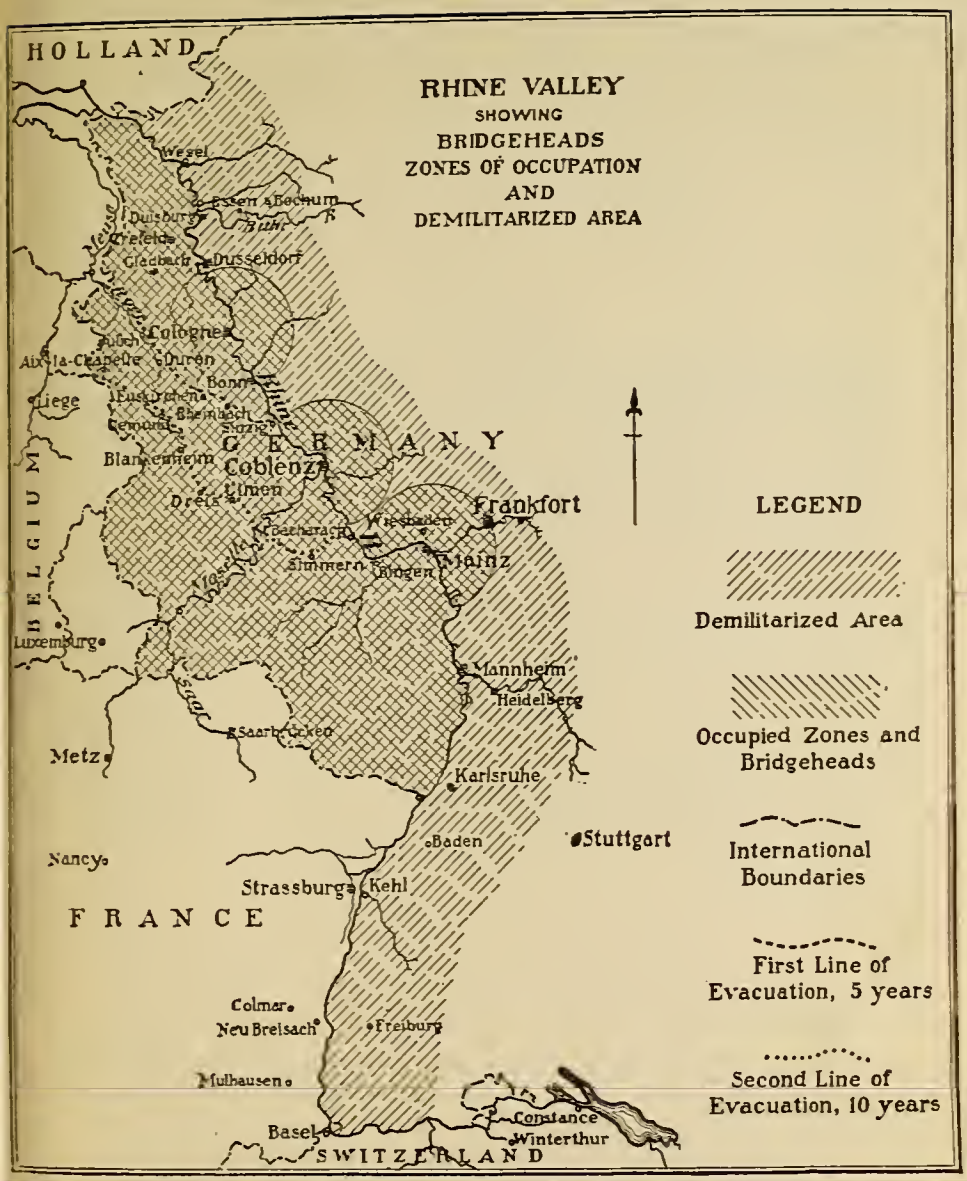
Annex D. Arbitration treaty between Germany and Poland 66

Annex E. Arbitration treaty between Germany and Czechoslovakia 72

Annex F. Collective note to Germany regarding Article 16 of the Covenant of the League of Nations 72

No. 2. Treaty between France and Poland 73

No. 3. Treaty between France and Czechoslovakia 74


RHINE VALLEY
SHOWING
BRIDGEHEADS
ZONES OF OCCUPATION
AND
DEMILITARIZED AREA
HOLLAND
BELGIUM
GERMANY
FRANCE
SWITZERLAND
Wesel
Essen
Bochum
Duisburg
Crefeld
Gladbach
Düsseldorf
Cologne
Aachen
Aix-la-Chapelle
Düren
Bonn
Liège
Eupen
Rheinbach
Stolzenfels
Blankenheim
Coblenz
Dreis
Ulmen
Frankfort
Wiesbaden
Boppard
Simmern
Bingen
Mainz
Luxembourg
Mannheim
Heidelberg
Saarbrücken
Metz
Karlsruhe
Baden
Stuttgart
Nancy
Strassburg
Kehl
Colmar
Neu Breisach
Freiburg
Mulhausen
Basel
Constance
Winterthur
LEGEND
Demilitarized Area
Occupied Zones and Bridgeheads
International Boundaries
First Line of Evacuation, 5 years
Second Line of Evacuation, 10 years

Note to Map

The demilitarized area of Germany guaranteed by Locarno consists of a zone 50 kilometers east of the Rhine from the Netherlands to the Swiss border and the whole of German territory west of the Rhine. Art. 42 of the treaty of Versailles sets no time limit on the condition. Measurements made by the American Geographical Society show that the area contains 54,200 square kilometers, or 20,927.16 square miles.

By Art. 428 of the treaty of Versailles, "the German territory situated to the west of the Rhine, together with the bridgeheads," is under occupation, as indicated on the map. The bridgehead areas are "of a 30-kilometer radius on the right bank" (Armistice of November 11, 1918, V, par. 3). By Art. 429 Cologne bridgehead and the zone north of the Ruhr-Jülich-Düren-Euskirchen-Rheinbach-Sinzig line on the map were to be evacuated on January 10, 1925. For reasons connected with reaching a common agreement upon German armament reduction, actual evacuation was delayed until December 1, 1925, to be complete by February 28, 1926. The Interallied Rhineland High Commission relinquished its authority in that territory simultaneously with the evacuation of the occupying troops.

THE LOCARNO SETTLEMENT

The nine documents initialed at Locarno, Switzerland, on October 16, 1925, and signed at London on December 1, establish new conditions favorable to peace in the world.

They eliminate the Rhine as a frictional element in European affairs for the first time since the days of Louis XIV: The Rhineland treaty closes a chapter in history.

They engage Germany on the one side and Belgium, France, Czechoslovakia and Poland severally on the other to a system of settling all their disputes by processes of disinterested adjustment or adjudication, except those "disputes arising out of events prior to the present convention [treaty] and belonging to the past."[1] The parties to the system thus recognize as a basic element in their relations the agreement they have taken under Art. 12 of the Covenant of the League of Nations:

> The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council.

The undertakings of Members of the League of Nations in the Covenant have been more fully established as the standard engagements subsisting between states, because the signatory states based their negotiations on the fact that the provisions of the Covenant were binding upon each of them. The proceedings at Locarno were the result of correspondence in which France, in particular, had continually insisted that "no agreement could be achieved unless Germany on her side assumes the obligations and enjoys the rights laid down in the Covenant."

The treaties mark the end of the psychological aftermath of the World War. The security treaty was concluded because the parties were "anxious to satisfy the desire for security and protection which animates the peoples upon whom fell the scourge of the war of 1914–1918," Germany being one of the contracting parties notwithstanding that the treaty of Versailles (Art. 231) says: "The Allied and Associated Governments affirm and Germany accepts the responsibility [for all loss and damage] as a

[1]Arbitration conventions, Art. 1, par. 2.

consequence of the war imposed upon them by the aggression of Germany and her allies."

The treaties indicate a change of spirit in the relations between certain nations. Statesmen everywhere preach sermons on occasions when it is inconvenient to say what they really think and intend, but they have been deficient in acting upon premises broader than their own country's immediate and obvious advantage. The principle of basing policy upon a thesis of mutual friendship and mutual trust has seldom been tried. The states concerned in the Locarno negotiations did not adopt that policy from any initial sense of altruism. Each was impelled by practical considerations, and each, by reasoning of its own, arrived at the independent conclusion that the moral disarmament which is the required precedent of material disarmament should be the working formula of European statesmanship.

The "Spirit of Locarno"

The "spirit of Locarno" is the desire of states "inspired by peaceful intentions to introduce into their relations a spirit of confidence, good faith and good will." It assumes that these sentiments will be manifested "in the negotiations necessitated by the questions that arise."[1] It doubtless attracts attention on account of the novelty of states collaborating on such a basis.

Specifically, the parties to the Locarno documents have the conviction that their work "will contribute greatly to bring about a moral relaxation of the tension between nations;

"that it will help powerfully toward the solution of many political or economic problems in accordance with the interests and sentiments of peoples, and

"that, in strengthening peace and security in Europe, it will hasten on effectively the disarmament provided for in Art. 8 of the Covenant of the League of Nations."

To the latter end "they undertake to give their sincere cooperation to the work relating to general disarmament already undertaken by the League of Nations and to seek the realization thereof in a general agreement."

The meaning of Locarno in its broad aspects may be stated in

[1]The quotations are from the note of the Ambassadors' Conference to the German ambassador at Paris, November 14, 1925. (Miscellaneous No. 12 (1925), p. 10.)

the words of its participants. After the signing of the documents at London, each of the heads of delegations spoke.[1]

"Among the numerous letters that I myself have received," said M. Briand of France, "there is one which particularly touched me and which by itself would have made me regard the act with which I was associated at Locarno as the most important and the most moving of my already long political life. It is a simple letter of a few lines from an unknown woman of the people who wrote, 'Allow a mother of a family to congratulate you. At last I shall be able to look at my children without apprehension and to love them with some security.'

" . . . The spirit of solidarity takes the place of that of distrust and suspicion. It is not by an accumulation of strength that it is hoped to render war impossible but by the bonds of mutual assistance and human solidarity.

"Opposite me sit the German delegates; that does not mean that I do not remain a good Frenchman, as they remain, I am sure, good Germans, but in the light of these treaties we are Europeans only.

"By our signatures we declare peace. The particularism of our countries is blotted out by this agreement and with it vanish unpleasant memories. If the Locarno agreements do not mean that they do not mean much. If they are not the draft of the constitution of a European family within the orbit of the League of Nations they would be frail indeed and would hold many disappointments in store for us.

" . . . And here I make this solemn declaration, confident that I am spokesman for the immense majority of my compatriots: I am determined to extract tomorrow from these conventions everything they can provide against war and in favor of peace. I see in them the beginning of a magnificent work, the renewal of Europe, its investment with its true character by means of a general union in which all nations will be invited to participate, each according to their special qualifications, to insure a definitive peace and to find in that peace the consecration of their intelligence and their genius while allowing them to advance each day along the road of progress."

"I see in Locarno," said Herr Stresemann, the German foreign

[1]London *Times*, December 2, 1925, p. 16.

minister, "not a juridical construction of political ideas, but I see in the work of Locarno the basis of a great future development. Statesmen and nations profess therein the determination to prepare the way for the longing of humanity for peace and concord."

Turning to Monsieur Briand, he continued: "You proceed from the thought that each one of us must first be a citizen of his own country, a good Frenchman, a good Englishman, a good German, as a member of his own nation, but each one also a citizen of Europe, linked together by the great conception of civilization which imbues our continent. We have a right to speak of a European idea; this Europe of ours has made the largest sacrifices in the world war, it is now threatened by the danger of losing through the effects of the war the position to which it is entitled by reason of its tradition and development."

The spokesman for each of the seven countries emphasized that "the great majority of the people are in favor of this peace."

Postwar Rhineland Tension

The steps by which Locarno became a reality may profitably be reviewed for the sake of perspective. France as a victor made much at the Paris Peace Conference of the thesis that the left bank of the Rhine was a "military springboard" from which Germany could at any time launch an attack. Marshal Foch put various military solutions of this assumed problem forward at the time and M. Clemenceau advocated others.[1] In the end, a solution agreeable to the victor states was incorporated in the treaty of Versailles as Arts. 42–44 and 428–32. The draft text was handed to the Germans on May 8, 1919, and their opinion at the outset was shown by the *Comments by the German Delegation on the Conditions of Peace*, a paper dated May 29, 1919.[2] The solution arrived at by the victors and the German attitude toward it were:

1. *Demilitarization of left bank of Rhine.* German attitude:

[1]For a general review of this question see "France's Policy on the Rhine," by Denys P. Myers, *Current History*, February, 1923, p. 730. Authentic works are: Ray Stannard Baker, *Woodrow Wilson and World Settlement*, II, p. 1–101; III, p. 227–56; André Tardieu, *The Truth about the Treaty*, p. 145–232; H. W. V. Temperley, *A History of the Peace Conference of Paris*, II, p. 113–22.

[2]*International Conciliation*, October 1919, No. 143. The quotations are from p. 95–100.

"Actuated by the belief that those nations which have hitherto been her opponents are also desirous of peace and a reconciliation of the nations, Germany has no misgivings in renouncing the fortifications on her western frontier" (p. 95).

2. *Occupation as guaranty.* German attitude: "The occupation would render the fulfilment of the reparation obligations either most difficult or absolutely impossible." A counter proposal of temporary occupation was made. "If the allied and associated Governments feel the need of providing themselves with guaranties, after the conclusion of peace, for the keeping of the agreement and for the fulfilment of the obligations which Germany has undertaken, there are more effective means of achieving this than force and compulsion." "Justice and the free agreement of all parties to the treaty will prove to be the strongest, in course of time the only, guaranties of the pact to be concluded."

The allied reply of June 16, 1919, to the German arguments consisted of a quotation from a speech of President Wilson on September 27, 1918: "The reason why peace must be guaranteed is that there will be parties to the peace whose promises have proved untrustworthy."[1]

French fears were not quieted by the articles written into the treaty against the German demurrer. As a consequence, a separate agreement was made by Great Britain and the United States, specifically binding those two states "to come immediately to [French] assistance in the event of any unprovoked movement of aggression against her being made by Germany" in case Arts. 42–44 of the treaty of Versailles might "not at first provide adequate security and protection to France."[2]

The United States Senate did not advise and consent to the ratification of the American agreement, and consequently neither treaty came into force. France, nervously fearful of her "security",[3] reverted to a policy based on the subtleties of *la haute politique.* Having assumed a position of distrust of Germany and

[1]*International Conciliation*, November, 1919, No. 144, p. 88; Sen. Doc. No. 149, 66th Cong., 1st sess., p. 155.

[2]*Postwar Political Alignments*, this Series, Vol. VI, No. 2, p. 95; *Treaties, Conventions, etc., between the United States and other Powers, 1910–1923*, p. 3709.

[3]For a typical but unusually frank statement of the French attitude, see M. Herriot's remarks, June 22, 1924, *Reparation*, Part VI, this Series, Vol. VIII, p. 225.

of remaining dominant,[1] France sought to consolidate that policy by seeking aid against attack and by pursuing the object of maintaining German inferiority in whatever negotiations happened to be up. "Security" was the watchword of policy. It gave direction until late in 1923 to reparation decisions. It brought about the Franco-Belgian exchange of notes of September 10–15, 1920.[2] It caused a friendliness which constituted part of the inspiration of the Little Entente, on the theory that the Little Entente was devoted to the maintenance of treaties of peace and that the most vigorous support of the terms of the settlement was most advantageous for continued French hegemony.[3] It conceived the theory of supporting Poland in her contentions against Germany.[4] An alliance with Poland was signed on February 19, 1921.[5] From this concert of policy grew a fear of "indirect attack," which was "even more likely to arise in future than direct attack." If "a resuscitated Germany, in combination perhaps with a resuscitated Russia, decided to fall upon Poland," this "would, of course, in the minds of the French, be almost equivalent to a direct attack upon their country."[6] With such views in action, a considerable tension developed in western European relations.

"Security" Negotiations

Efforts to reduce or to remove tensions were, however, almost continuous. Great Britain, after the failure of the American-

[1]Lord Curzon in reporting on January 28, 1922, a conversation with the French ambassador respecting a French proposal of treaty said: "Now, apparently, it was proposed that instead of the triple alliance, which had, we thought, disappeared altogether, there should be set up a new double alliance between Great Britain and France, which, as the most powerful nations, would dominate the scene, assuming the responsibilities which did not belong to them alone and claiming a sort of hegemony in Europe." (*Papers respecting Negotiations for an Anglo-French Pact.* France No. 1 (1924). Cmd. 2169, p. 133.)

[2]League of Nations, *Treaty Series*, II, p. 128.

[3]*Cf.* particularly "The Hapsburg Restoration Movement," Chap. IV in *Postwar Political Alignments*, this Series, Vol. VI, No. 2, p. 123.

[4]*Cf.* French support to Korfanty in Upper Silesia and the published accounts of the meetings of the so-called Supreme Council on the Upper Silesian plebiscite in 1921.

[5]*Postwar Political Alignments*, p. 107–111; League Nations, *Treaty Series*, XVIII, p. 112.

[6]The French ambassador at London to Lord Curzon, December 5, 1921. "Papers respecting Negotiations for an Anglo-French Pact," France No. 1 (1924), Cmd. 2169, p. 109.

Anglo-French guaranty plan of 1919 and in face of French nervousness, felt a desire to satisfy France respecting "security." Negotiations were begun on December 5, 1921, on French initiative, and a British draft was produced at Cannes on January 12, 1922.[1] A French objection to this brought about the resignation of the Briand ministry and the accession of M. Poincaré to power. "The *amour propre* of France, demanding that the two countries shall be placed on a footing of equality" was assigned by Lord Curzon as a reason why France wished a reciprocal arrangement by which France would come to British aid in case of a German attack, as well as Britain aiding France.[2] The negotiations continued desultorily, but seem to have broken down because, while both parties were agreed that the conclusion of the pact must "be accompanied by a liquidation of outstanding questions," they could not agree upon what questions were important enough to settle in this connection.[3]

Following a definite outvoting of the British and Italian delegates in the Reparation Commission, Germany was found in voluntary default in her obligations and French and Belgian troops occupied the Ruhr on January 11, 1923, as a measure of sanction. "The French Government did not regard the question of the Ruhr in any way bound up with that of security."[4] The British held that the Ruhr occupation was not a sanction authorized by the treaty,[5] and heated arguments occurred on that point.[6] In the course of the difference, the proposed security pact was lost to sight.

On December 18, 1922, Germany proposed a mutual engagement

[1]In a memorandum dated Cannes, January 4, 1922, from the British Government, it was proposed that there be "a simple condition of international accord, 'that all nations should join in an undertaking to refrain from aggression against their neighbors.' The hope of Great Britain is to secure this undertaking from all nations of Europe without exception. It is essential that the division of the European nations into two mighty camps should not be perpetuated by narrow fears on the part of the victor nations or secret projects of revenge on the part of the vanquished." This effort at a general solution proved abortive at the Genoa Economic Conference. (France No. 1 (1924), p. 120.)

[2]France No. 1 (1924), p. 155.

[3]*Cf.* France No. 1 (1924), p. 165, 166, 169, 171.

[4]France, No. 1 (1924), p. 171.

[5]Treaty of Versailles, Part VIII, Annex II, par. 18.

[6]*Cf.* the British note of August 11, 1923, and French reply of August 20, 1923, *Reparation*, Part IV, Vol. VI, No. 4, at p. 280 and 294.

that Germany, Great Britain, France and Italy "promise the United States not to make war among themselves for a generation . . . unless the matter is decided by a popular vote." The United States, to which the document was sent, did not transmit this proposal officially after it was learned that M. Poincaré would not receive it favorably.[1]

Influence of League of Nations

Meantime another set of circumstances was developing at Geneva. By Art. 8 of the Covenant of the League of Nations, its Members "recognize that the maintenance of peace requires the national reduction of armaments." A Temporary Mixed Commission for the Reduction of Armaments was provided for in a resolution of the 1920 Assembly, resolutions on its recommendation of a preliminary character being passed by the 1921 and 1922 Assemblies. On the latter occasion there were suggestions among the disinterested delegations that the reparation question, then tense, be removed from the jurisdiction assigned it under the treaty of Versailles and be handled in "the atmosphere of Geneva."[2] France defended the scale of her armament at that time against criticisms by adducing her complaints against German nonfulfilment of her reparation obligations. Both points of view were served by the passage of a resolution, on French initiative, to the effect that "moral disarmament is an essential preliminary condition of material disarmament, and that this moral disarmament can only be secured in an atmosphere of mutual confidence and security."[3] It was largely the progress recorded in this Resolution XIV of 1922 which made possible the elaboration of the Draft Treaty of Mutual Assistance at the 1923 Assembly. The principle of mutual assistance on which this document was built had been especially emphasized in the French draft which had been a basis of the Commission's studies.[4] The definite objections made against the draft treaty centered around

[1] *Postwar Political Alignments*, p. 106, with citations at p. 107.

[2] See *Records of the Third Assembly*, Index, title "Reparations."

[3] See full text in *Resolutions and Recommendations of the Assembly*, 1922, p. 27; *Handbook of the League of Nations*, 1923, p. 260.

[4] See the Réquin draft, *Report of the Temporary Mixed Commission* (A. 35. 1923), p. 62.

its failure to take due account of methods of pacific settlement.[1] By the 1924 Assembly, it was the fashion to associate arbitration and disarmament, the association having been popularized by the employment of arbitration at the London Reparation Conference in 17 places in the documents where disputes might hinder the operation of the agreements to carry out the Experts' (Dawes) Plan.[2] Premier MacDonald of Great Britain spoke in that Assembly on combining the two ideas, and Premier Herriot of France added the thesis of security. The examination of the "guaranties of security which a resort to arbitration and a reduction of armaments may require" by the First and Third Committees of the Fifth Assembly resulted in developing a spirit of rivalry in seeking the utmost possible agreement and brought forth the Protocol for the Pacific Settlement of International Disputes. The protocol was in form a general agreement to close "the fissures in the wall of protection erected by the Covenant round the peace of the world." The British declination to ratify the protocol is universally admitted to be the reason for its failure. The declaration of the British representative on the Council of the League on behalf of his Government on March 12, 1925, stated:

> Since the general provisions of the Covenant can not be stiffened with advantage, and since the "extreme cases" . . . will probably affect certain nations or groups of nations more nearly than others, His Majesty's Government conclude that the best way of dealing with the situation is, with the cooperation of the League, to supplement the Covenant by making special arrangements in order to meet special needs. . . . These objects can best be attained by knitting together the nations most immediately concerned, and whose differences might lead to a renewal of strife, by means of treaties framed with the sole object of maintaining, as between themselves, an unbroken peace.[3]

It is interesting to note that, though the British objection to the

[1]See League of Nations, *Reduction of Armaments*. Treaty of Mutual Assistance, Replies from Governments (A, 35, 1924), especially the British, Dutch and Scandinavian replies. See also report on the Protocol, this Series, Vol. VII, No. 7, p. 418.

[2]See analysis in *Reparation*, Part VI, p. 315.

[3]League of Nations, *Official Journal*, VI, p. 450. Mr. Chamberlain in his note of May 28, 1925, forwarding the British comments on the French draft of reply to the German memorandum of February 9 stated: "3. The point of departure is to be found in the reasoned statement which I made on behalf of His Majesty's Government to the Council of the League of Nations on March 12 last." (Miscellaneous No. 7 (1925), p. 19.)

229402

Protocol was that it was best to begin with specific arrangements, the specific proposal in the German memorandum of February 9, which had been in Mr. Chamberlain's hands more than a month, contemplated it as a step toward a general agreement. The German memorandum says:

> It would be worth considering whether it would not be advisable to so draft the security pact that it would prepare the way for a world convention to include all states along the lines of the "Protocole pour le Règlement pacifique de Différends internationaux" drawn up by the League of Nations, and that, in case such a world convention was achieved, it could be absorbed by it or worked into it.

Reference has just been made to one effect of the successful establishment of the present reparation system resulting from the Experts' Plan of April 9, 1924, and the agreements implementing it of August 30, 1924. Not only did the London Reparation Conference make use of arbitration as a statesmanlike device, but it proceeded on a basis of friendliness, cooperation and conciliation, to which its success was in some part due and which created a new spirit in Franco-German relations. This new attitude was an important preliminary condition of Locarno.

Germany's Admission to the League

Another element contributing to the Locarno result was the removal of disabilities to Germany's admission to the League of Nations. The situation is somewhat complicated and not properly understood in some quarters. The Covenant of the League of Nations was elaborated as an international treaty at the Paris Peace Conference. By its terms states parties to it agree to and accept as between themselves certain standards of international conduct or procedure. States whose good faith was not in doubt at Paris were named as original Members in an annex to the document. Any other state is admitted by two-thirds vote of the Assembly, after having given "effective guaranties of its intention to observe its international obligations" and having accepted "such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments." The ex-enemy states were not named in the annex.

Austria and Bulgaria of the ex-enemy states were admitted to

membership by Assembly vote in 1920 and Hungary in 1922. In 1920 the Austrian and Bulgarian applications had the warm support of the limitrophe states, which were most nearly affected and most inclined to question good faith of the applicant. In 1922 limitrophe states questioned the good faith of Hungary, but for that very reason supported the application on the ground that membership in the League would make her a safer and better neighbor. In 1920, speaking on the admission of Austria, the Swiss delegate, President Motta, said:

> Germany asked the Peace Conference for admission into the League of Nations. At that moment the Peace Conference did not see its way to grant this wish. Allow me to tell you, in all frankness and in all sincerity, that we understood this attitude, but that we in Switzerland did not share it.

To this the impassioned René Viviani gave the French view:

> . . . In the eyes of France, the League of Nations was a universal body. May I say that this is not the first time that a statement of this nature has been made by a Frenchman? But let us be precise, for we must have no ambiguity here.
>
> What is the position of the League of Nations with regard to Germany? If I may venture to use a term employed in the law courts, we are the defendants; it is for Germany to act the plaintiff. It is not for us to appeal to her; it is for her to make herself worthy to be received.[1]

It is probable that the mere admission of Germany would have commanded the requisite Assembly vote at any time since 1920; but the application must come from the state desiring membership and no such document was ever presented. An application might have been considered if Germany had not been convinced that she was entitled to a permanent seat on the Council, which required an affirmative vote of France. But the questions whose settlement most concerned Germany from 1919 to 1924 were not ones which in any event would come before the League, since their regulation was minutely prescribed in the treaty of Versailles.[2]

Nevertheless, among the representatives of states at the Assembly there was constant unofficial pressure of opinion in favor of

[1] *Records of the First Assembly*, Plenary Meetings, p. 572, 575.

[2] The Committees of Experts were, for instance, acting under Art. 234.

German admission. The French attitude modified from year to year and in mid-September, 1924, Fridtjof Nansen of Norway left the Assembly to consult on the matter with the German chancellor. On September 24, 1924, the German cabinet announced a decision to pursue a policy looking toward admission to the League and to enter upon preliminary negotiations to that end. The *communiqué* to this effect coming to the attention of the French cabinet, there followed soundings and eventually encouragement to proceed with that policy.

In the note of June 16, 1925, France asserted that the Locarno agreement could "only be conceived if Germany herself enters the League of Nations." In the reply of July 20 Berlin asserted that "the entrance of Germany into the League of Nations would not be a necessary condition" to the agreement. But in view of the importance of solving the security question, "they will, in principle, not raise any objection against the linking up of the two problems." Thus it came about that the German application for admission to the League was virtually made on the insistence of France, as a complement of Locarno.

This review, primarily of Franco-German relations, indicates the disappearance of suspicion and ill will and their replacement by confidence and good will. The exercise of the better qualities bore fruit rapidly once they were granted lodgment in the soil of international relations: for it is only since August, 1924, that they have been operative. Cooperation for common advantage has replaced rivalry for individual privilege; the mutual seeking of agreement has succeeded chauvinistic insistence on the nationalistic point of view; the cultivation of friendliness through understanding has prevailed over the fostering of friction through self-esteem. France is playing a notable part in pursuing permanent results under the new policy "that sincere observance of the methods of peaceful settlement of international disputes permits of resolving without recourse to force questions which may become the cause of division between states."[1] Premier Briand of France spoke for all when he said at London that "the particularism of our countries is blotted out by this agreement and with it vanish unpleasant memories."

[1]Preamble, arbitration treaties.

History of the Negotiations

Historically, the Locarno treaties are due to the initiative of Germany, whose memorandum of February 9, 1925, started the negotiations and defined the subject matter. The memorandum proposed nothing that was questionable in German policy.

At least since the note of April 1, 1924, to the Conference of Ambassadors,[1] Germany has gone on the theory that her disarmament is an asset and that she has much to gain by insisting that, as the preamble to the provisions in the treaty of Versailles asserts, her own limitations are "to render possible the initiation of a general limitation of the armaments of all nations." The proposal "not to wage war" was, therefore, an easy one.

As early as December 3, 1921, Germany negotiated a treaty[2] providing for the settlement of all disputes by pacific methods with Switzerland and she has made others since. The arbitration proposal was, therefore, applying a practice already in operation.

Germany assented to the demilitarization of the Rhineland at the Paris Peace Conference, and to guarantee that was consequently no effort. A guaranty of the territorial *status quo* in the Rhineland, from the German point of view, had the advantage of providing additional security, if not extended to the eastern border.

The negotiations leading up to the actual conference at Locarno were felt by all parties to be critical, but all parties proceeded with notable good will and with a directness devoid of mere debating points. The French formal reply to Germany of June 16 was really a document negotiated with Great Britain, which until September 15 was not an actual party to the *pourparlers*. The German reply of July 20 was responsive.

M. Briand consulted with Mr. Chamberlain at London August 10–13, at which time the foreign secretaries, aided by experts, reached full agreement upon the substance of a reply, which was dispatched to Berlin on August 24. All the foregoing correspondence exhibited such evident desire on both sides to come to an understanding that M. Briand closed this note with an invitation

[1]New York *Times*, April 3, 1924, p. 4; London *Times*, April 3, p. 13; *Le Temps*, April 3, p. 2.

[2]Text in League of Nations, *Treaty Series*, XII, p. 272.

to enter into negotiations on the basis then reached. This was accepted and resulted, in the first instance, in the convening of jurists at London September 1–4 to study the problems involved from the technical point of view, and to elaborate draft texts for further consideration by the ministers and cabinets. At this stage the negotiations widened and experts from Belgium, France, Germany, Great Britain and Italy participated in the meeting of jurists.

Up to this point it had been anticipated that it might be possible to reach an agreement in the early days of the Sixth Assembly of the League of Nations and that Germany's application for admission might be acted upon during its session. The questions involved in the negotiations were so momentous for the states concerned that they decided against trying to keep such a schedule.

Accordingly, the ministers took plenty of time to examine the reports of their jurists, and it was not until September 15 that France and her colleagues addressed to Germany an invitation to a conference. The latter accepted the invitation on September 26, without reservations, but accompanying its delivery with observations as to certain questions which its ambassadors were instructed to make.

These observations were a result of internal pressure in Germany. The political parties of the right were insistent upon using the negotiations to clean up outstanding questions not included in the program. The German Government accordingly instructed its ambassadors to make the observations, but to do so in such a way as not to jeopardize the prospects of the conference. The observations dealt with:

1. A statement that, if the conference succeeded, Germany would apply for admission to the League of Nations;

2. The question of Germany's sole responsibility for the outbreak of the World War;

3. Evacuation of the Cologne zone of the occupied area.

The Belgian, British and French ministers replied separately, the two latter on September 29. All made it clear that the questions raised by Germany were not included in the program of the coming conference.

The conference was held at Locarno, a little town situated at the northern end of Lake Maggiore in the canton of Ticino,

Italian Switzerland. It sat from October 5 to 16, 1925, and throughout made the most steady progress toward agreement. The delegations met each other cordially and as friends rather than as opponents.

United States Held Aloof

There was no American representation, official or unofficial, at the Locarno Conference. Previous to the composition of the German memorandum of February 9, 1925, reports in the press stated that the American ambassador at Berlin had been discussing the European situation intimately with high officials of that Government. The German memorandum, in referring to the solution of the Rhineland problem, proposed "a solemn obligation . . . *vis-à-vis* the Government of the United States of America as trustee not to wage war against a contracting state." It was suggested that this obligation be taken by Germany, Great Britain, France and Italy, Belgium having been omitted in error. In the French reply of June 16 to that memorandum, drafted in agreement with Belgium and Great Britain, occurs this paragraph:

> Finally, it goes without saying, that, if the United States were to find it possible to associate themselves with the agreements which would thus be realized, France would be only too happy to see the great American nation participate in this work of general peace and security.

The subsequent negotiations contain no recorded reference to the United States. Inquiry to the Department of State for information as to the circumstances under which the attitude of the United States toward the negotiations was formulated, brought the following reply:

> No request has ever been addressed to this Government to act as "trustee" for the Security Pact between France and Germany and consequently no note outlining the policy of the United States in this respect has ever been issued.[1]

In the President's annual message of December 7, 1925, he states:

> The Locarno agreements were made by the European countries directly interested without any formal intervention of America, although on

[1]WE: 751. 6211/204.

July 3 I publicly advocated such agreements in an address made in Massachusetts.

As the address in question, which was at Cambridge on the occasion of the 150th anniversary of Washington assuming command of the Continental Army, was subsequent to the delivery of the French note of June 16, and prior to the composition of the German answer of July 20, it would seem that the President's words at that time accounted, so far as the public record is concerned, for the omission of any reference to the United States in the ensuing negotiations. On July 3 he spoke as follows:

If the people of the old world are mutually distrustful of each other, let them enter into mutual covenants for their mutual security, and when such covenants have been made let them be solemnly observed, no matter what the sacrifice. They have settled the far more difficult problems of reparations, they are in process of funding their debts to us. Why can they not agree on permanent terms of peace and fully reestablish internal faith and credit? If there be differences which can not be adjusted at the moment, if there be conditions which can not be foreseen, let them be resolved in the future by methods of arbitration and by the forms of judicial determination.

While our own country should refrain from making political commitments where it does not have political interests, such covenants would always have the commendation of the public opinion of the world. Such a course would be sure to endow the participating nations with an abundant material and spiritual reward.

On what other basis can there be any encouragement for a disposition to attempt to finance a revival of Europe? The world has tried war with force and has utterly failed. The only hope of success lies in peace with justice. No other principle conforms to the teaching of Washington; no other standard is worthy of the spirit of America; no other course makes so much promise for the regeneration of the world.

Connection with League of Nations

The relation of the Locarno agreements to the League of Nations should be clearly understood. It is well known that the entrance of Germany into the League was a condition precedent to the negotiations. The Locarno documents were consequently built upon the assumption that the rights and obligations of Members of the League were common to all contracting parties.

All of the parties in the final protocol have undertaken to

give sincere cooperation with respect to the disarmament program of the League and to strive for a general agreement on that subject. By the preamble of the treaty of mutual guaranty, its provisions are described as "within the framework of the Covenant of the League of Nations" and by its Art. 7—which is common to the German-Polish and German-Czechoslovak arbitration treaties (Art. 21)—it is declared to be "in conformity with the Covenant of the League of Nations." It follows from that stipulation, as stated in the German-Polish and German-Czechoslovak arbitration treaties, that the documents "shall not in any way affect the rights and obligations of the high contracting parties as Members of the League of Nations."

This is made clear by the additional engagement that the treaties "shall not be interpreted as restricting the duty of the League to take whatever action may be deemed wise and effectual to safeguard the peace of the world." By Arts. 3 and 4 of the Covenant, the Assembly and Council may deal at their meetings "with any matter affecting the peace of the world." The language used in the Locarno treaties is a repetition of a clause in Art. 11, par. 1, of the Covenant, by which states Members of the League declare that any war or any threat of war is a matter of concern to the whole League. By Art. 19 of the Covenant, the Assembly "may from time to time advise . . . the consideration of international conditions whose continuance might endanger the peace of the world." It would consequently seem that these undertakings of the Members of the League are to be read as part of the Locarno engagements, which in a certain sense constitute a further engagement of the Locarno parties to the 48 other fellow Members of the League of Nations.

The physical arrangements of the treaties emphasize the relation to the League of Nations. A single original of the treaties and conventions is deposited in the archives of the League and the parties themselves receive their official copies, certified as true by the Secretary-General, from this original. It is believed that this is the first instance in which the League of Nations has been made the original depository of treaties not intended to be generally international in their nature. Ratifications are deposited at Geneva. The treaties enter into force when these deposits have been completed and Germany has become a Member of the

League. The duration of the treaties is not within the discretion of the parties, for they shall remain in force until the Council "decides that the League of Nations insures sufficient protection to the high contracting parties."

The Network of Documents

International affairs since the World War have been conducted on the principle of the representation of those interested in whatever matter is afoot. The Locarno Conference followed this practice, the rather complicated result meriting explanation and its significance deserving attention.

The final protocol was signed on behalf of Germany, Belgium, Great Britain, France, Italy, Poland and Czechoslovakia, which recognize the mutual interdependence of (1) the treaty of mutual guaranty between Germany, Belgium, France, Great Britain and Italy; (2) arbitration conventions ancillary to the treaty of mutual guaranty between Germany on the one side and Belgium and France, respectively, on the other; and (3) arbitration treaties, not connected with the treaty of mutual guaranty, between Germany on the one side and Poland and Czechoslovakia, respectively, on the other. In addition, it noted that, "as a result of the draft arbitration treaties," France on the one side and Poland and Czechoslovakia on the other had simultaneously concluded treaties "to assure to themselves the benefit of the said treaties"; but those treaties were not formally communicated to the other Locarno contractants. Included in the documents, but not partaking of the character of mutual interdependence, was a letter to Germany respecting Art. 16 of the Covenant of the League of Nations which was handed to its foreign minister on December 1 as a collective note from Belgium, Great Britain, France, Italy, Poland and Czechoslovakia.

Great Britain and Italy took at Locarno no engagement either between themselves or with any other parties except to guarantee the Rhineland and to guarantee (Art. 3, treaty of mutual guaranty) that Germany and Belgium and Germany and France "undertake to settle by peaceful means . . . all questions of every kind." Great Britain and Italy, by recognizing the German-Polish and German-Czechoslovak arbitration treaties, as part of the mutually interdependent system, take a position with regard to them.

The Rhineland Guaranty

The treaties may be summarized as follows:

Germany, Belgium, France, Great Britain and Italy, as a group and individually, guarantee the present German frontiers of Belgium and France and the demilitarization of German territory west of a line drawn 50 kilometers east of the Rhine.

Under the auspices of Great Britain and Italy, Germany and Belgium and Germany and France mutually undertake not to attack or invade each other or resort to war against each other. This undertaking does not apply in five situations:

1. Exercise of the right of resistance to a violation of the undertaking specified above;
2. Flagrant breach of the provisions demilitarizing the Rhineland;
3. Action to fulfill the undertaking of Art. 16 of the League Covenant, that is, to apply sanctions in case of resort to war in disregard of the pacific settlement provisions of the Covenant (Arts. 12, 13 and 15);
4. Action resulting from a decision of the Assembly or Council of the League;
5. Action directed against an attacking state, definable as necessary if such action is taken for the maintenance of peace following a unanimous report on an inquiry by the League Council.

In view of the above guaranty and mutual undertaking, Germany and Belgium and Germany and France undertake to settle by peaceful means "all questions of every kind which may arise between them" which are not settled by normal methods of diplomacy.

Pacific Settlement of Rhine Questions

Beyond this point, the agreements to which Germany, Belgium and France are parties, distinguish two procedures of pacific settlement, the first of which is under the definite guaranty of Great Britain and Italy, and the second under their constructive guaranty.

The first method of pacific settlement is specific and relates to

disputes arising out of the mutual undertaking of Germany, Belgium and France not to enter on hostilities. If either Germany, Belgium, France, Great Britain or Italy should allege a violation of that undertaking or a breach of the demilitarization, the allegation shall be considered at once by the Council of the League. If the Council is satisfied that such violation or breach has been committed, those states agree, each for itself, to come to the assistance of the injured state. If there should occur a flagrant violation of the peace or a flagrant breach of the demilitarization, each state undertakes to come to the aid of the injured state on satisfying itself that an unprovoked aggression has taken place and that immediate action is called for by military movements. But in this case the Council of the League will still issue its findings and all parties undertake to act in accordance with recommendations of the Council concurred in by all its members except those having engaged in hostilities.

That procedure, which in the last analysis brings any definite Rhineland violation up as a question of world concern to the Council of the League, is to be applied not only as the last resort to maintain peace, but after the application of the general scheme of pacific settlement, which is intended to be complete in covering all subjects of dispute and in affording several forms of jurisdiction. Great Britain and Italy guarantee by Art. 5 that Germany, Belgium and France, who likewise are guarantors, shall apply the foregoing procedure in case either of the latter states refuses to submit a dispute to peaceful settlement or to comply with an arbitral award or judicial decision, this refusal being accompanied by hostilities or breach of demilitarization. If the refusal is not accompanied by the overt act or acts, Germany, Belgium or France "shall bring the matter before the Council" and Great Britain, Italy, Germany, Belgium and France "shall comply" with its proposals as to "what steps shall be taken."

Complete Pacific Settlement

The general scheme of pacific settlement is defined by Art. 3 of the treaty of mutual guaranty and by the arbitration conventions, which contain the detailed arrangements. These conventions between Germany and France and Germany and Bel-

gium are identic with the arbitration treaties between Germany and Poland and Germany and Czechoslovakia, with the exception of Art. 21 of the latter, identic with Art. 7 of the treaty of mutual guaranty, to which neither Poland nor Czechoslovakia are parties.

By the network of these documents Germany[1] on the one side and Belgium, Czechoslovakia, France and Poland, severally, on the other, engage to settle "all disputes of every kind" . . . which it may not be possible to settle amicably by the normal methods of diplomacy" by peaceful means.[2] Provisions in conventions in force shall be applied to disputes arising thereunder in the first instance.

In any case the jurisdiction resorted to, including the Council of the League, shall lay down provisional measures to be adopted, particularly if the dispute "arises out of acts already committed or on the point of commission." The contracting Governments undertake "to accept such measures, to abstain from all measures likely to have a repercussion prejudicial" to the plans of the commission or the Council of the League and "in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute." (Art. 19.) All contracting parties to the scheme agree to apply it "even when other powers are also interested in the dispute." (Art. 20.)

When the "parties are in conflict as to their respective rights," the dispute "shall be submitted to an arbitral tribunal or to the Permanent Court of International Justice." Such disputes particularly include those "as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any inter-

[1]Germany thus has unlimited arbitration arrangements with each of the four neighboring states with which difficulties have arisen or threatened. In addition, she has an unlimited arbitration treaty with the limitrophe state of Switzerland (December 3, 1921), and negotiations with Denmark are under way. Austria, Luxemburg and the Netherlands are her remaining neighbors. The other contracting states have also negotiated similar treaties.

[2]Germany and Belgium and Germany and France are to submit to judicial decision "any question with regard to which the parties are in conflict as to their respective rights," and to comply with the decision. All other questions "shall be submitted to a conciliation commission." If its proposals are not accepted, the Council of the League under Art. 15 of the Covenant shall have jurisdiction. (Art. 3, treaty of mutual guaranty.) The same distinction is indicated in Part I and Part II of the arbitration documents.

national obligation, or as to the extent and nature of the reparation to be made for any such breach." A test of an international dispute is afforded by providing (Art. 3) that only a dispute upon which a final judgment has been pronounced by the competent national judicial authority falls within the scope of the scheme.

Before seeking an award or decision, however, the parties are at liberty to agree to submit their dispute to the Permanent Conciliation Commission, which they set up for less formal procedure, and whose report is due within six months. If the commission fails to produce agreement between the parties and thus to eliminate the dispute, it (Art. 16) "shall be submitted" either to the Permanent Court of International Justice or to an arbitral tribunal. The Statute controls procedure before the Court. Arbitration may employ arbiters from the panel of the Permanent Court of Arbitration under the Hague 1907 convention or others; in either case the procedure of that convention will control, unless modified by agreement. In formal judicial or arbitral practice the question at issue is defined by the parties. They might fail to find a satisfactory basis for this "special agreement." If they can not agree on its terms, one or other of the parties may bring the dispute itself, in its undefined state, "before the Permanent Court of International Justice by means of an application."

While questions involving "conflict as to their respective rights" must eventually come to an award or decision if conciliation at the outset does not solve them, Part II does not definitely leave all other disputes to conciliation. Art. 17 assigns to the Permanent Conciliation Commission "all questions . . . the settlement of which can not be attained by means of a judicial decision as provided in Art. 1" and not provided for in other conventions in force. The duty of the commission is "to propose to the parties an acceptable solution and in any case to present a report."

In case the Conciliation Commission does not bring about, or is unable to propose, a solution acceptable to the parties and the dispute is thus brought to an end, this report is submitted to each of the parties, which are to attempt to reach an agreement on the basis of its facts and considerations. If such agreement

is not reached within one month after the commission has finished its work, the question shall be brought by either party before the Council of the League under the procedure of Art. 15 of the Covenant (Art. 18).

The Permanent Conciliation Commission is composed of five members, a national of each contracting party and three nationals of third states appointed by agreement between the contracting Governments. The commission is permanent, commissioners holding office for three years. In case the parties are unable to appoint, the President of the Swiss Confederation may fill vacant positions. The parties by agreement, or either of them alone, may bring a question before the commission by a request inviting the commission to seek a settlement and containing a summary account of the subject matter. If the dispute should be a technical one, the parties may replace the national commissioners by persons possessing special competence in the matter.

The task of the commission "shall be to elucidate questions in dispute." It may inform the parties of terms in its opinion suitable for settlement, prescribing a period within which the parties are to accept or reject them. The commission makes a report of its labors, whether or not it has brought the parties into agreement. Six months is the normal period for the commission to consider a particular dispute. The procedure of the Hague 1907 convention relative to commissions of inquiry is normally to be applied.

Germany's Eastern Border

The Franco-Polish political agreement of February 19, 1921,[1] and the Franco-Czechoslovak political treaty of January 25, 1924,[2] created a theoretical military situation in which those countries would be the jaws of a vise around Germany. The theory of indirect attack which France had brought up in negotiations long proved to be a stumbling block to negotiations with Germany, since France claimed a duty under her bilateral agreement to come to the aid of Poland in case of German-Polish hostilities. On the other hand, in view of the history of the way the present situation in Upper Silesia was established, the troublesome

[1]League of Nations, *Treaty Series*, XVIII, p. 12.

[2]*Postwar Political Alignments*, p. 107.

question of the Polish corridor and other frictional relations, Germany was unwilling to enter into an engagement with Poland similar to Art. 2 of the treaty of mutual guaranty. This difficulty resulted in much discussion previous to the Locarno Conference. A compromise, effected as expressed in the treaties between Germany and Poland and Germany and Czechoslovakia, was concluded in draft at Locarno.

These treaties provide that, if the parties should suffer "from a failure to observe the undertakings arrived at this day between them and Germany with a view to the maintenance of general peace," and if the failure takes the form of "an unprovoked recourse to arms," the parties "will aid and assist each other" in application of Art. 16 of the Covenant. Art. 16, by the Covenant, is applicable only in case any Member of the League "resorts to war in disregard of its covenants under Arts. 12, 13 or 15," which establish the League system of pacific settlement. The possibility foreseen is further attenuated by the arbitration treaties of France, Czechoslovakia and Poland with Germany. Should the provisions of those treaties fail to keep the peace and the question were of such a nature that the conciliatory procedure of the Council under Art. 15 of the Covenant were the last resort —and if one of the parties should be attacked without provocation,—they agree to aid and assist each other immediately when the situation contemplated by Art. 15, par. 7, of the Covenant is reached.

The Purpose of Initialing

The method adopted for bringing the treaties into force has created some confusion of thought. At Locarno only the final act, in which no engagements were taken, was signed. This act declares that the Rhineland pact and the four arbitration conventions and treaties between Germany on the one side, and Belgium, France, Czechoslovakia and Poland severally on the other, are "mutually interdependent." The two agreements between France on the one side and Czechoslovakia and Poland on the other are not so defined in the final act, thus recognizing that they are solely bilateral in character.

These seven documents were only initialed at Locarno and bear the date of the final act, October 16. In other words, the dele-

gates at Locarno did nothing more than to certify their agreement upon common texts, without engaging their executive Governments. The final act further stipulates that the representatives of the interested parties then agreed to meet in London, December 1, for the purpose of signing the Rhineland pact and the arbitration conventions and treaties, which constitute the mutually interdependent body of agreements.

Behind this procedure lies a significant change with respect to the ratification of some international documents. By the constitutional practice of states the Executive negotiates and signs treaties, which, in varying degrees, are ratified only with legislative advice and consent. This method has resulted both in friction and the frequent paralysis of the conduct of foreign relations. It is admitted on all sides that a legislative body can not act as a negotiator. On the other hand, it is recognized that, whether right or wrong, the Legislature represents public opinion as well as the form of government permits its mobilization, and that it is essential for the executive negotiator to have the backing of public opinion for engagements intended to become binding. Cooperation between the Executive and the Legislature is difficult to realize, because their points of view are essentially different. The Executive must secure agreement by balancing the interest and advantage of his country against the interest and advantage of the other country. The Legislature is primarily concerned with the interest and advantage of its own country only and concerned with that principally with respect to presenting it in a manner strongly to appeal to constituents. The Executive in foreign relations acts as a trustee of national interests; the Legislature acts as a free agent appealing to prejudices of the public.

The President of the United States on February 24, 1923, initiated a departure from the usual practice when he requested the Senate to give its advice and consent to adhesion to the protocol of signature covering the Statute of the Permanent Court of International Justice, without at the same time presenting to that body any international executive act which might as a result of the Senate decision be either confirmed or rejected. This placed upon the legislative body the responsibility before the public for its own action.

An appropriate adaptation of this method was employed at

the London Conference on Reparation when on August 16, 1924, the parties concerned signed a final act providing that the formal signatures should be appended to the documents on August 30. The documents themselves stipulated that they should enter into force as from the date of signature. In the interval they were presented to the Parliaments concerned for such approval as was constitutionally required. The political situation in some of the participating countries was such that at the time it was doubted whether their approval would have been given completely if their obvious international responsibilities in the premises had not largely offset their normal tendency to assume a position along the lines of national politics.

The same procedure, it will be observed, was adopted respecting the Locarno treaties. They, therefore, represent not only the best agreement possible for the negotiators to secure under the circumstances, but also the responsible conviction of the representatives of the people of all contracting countries, taken with some conception of the international relations involved.

I. PRELIMINARY EXCHANGES OF VIEWS.

1. Memorandum communicated on February 9, 1925, by the German Ambassador in Paris to M. Herriot, President of the Council and Minister for Foreign Affairs.[1]

[Translation.]

(Strictly Confidential.)

In considering the various forms which a pact of security might at present take, one could proceed from an idea cognate to that from which the proposal made in December 1922 by Dr. Cuno sprang.[2] Germany could, for example, declare her acceptance of a pact by virtue of which the powers interested in the Rhine—above all, England, France, Italy and Germany—entered into a solemn obligation for a lengthy period (to be eventually defined more specifically) *vis-à-vis* the Government of the United States of America as trustee not to wage war against a contracting state. A comprehensive arbitration treaty, such as has been concluded in recent years between different European countries, could be amalgamated with such a pact. Germany is also prepared to conclude analogous arbitration treaties providing for the peaceful settlement of juridical and political conflicts with all other states as well.

Furthermore, a pact expressly guaranteeing the present territorial status (*gegenwärtiger Besitzstand*) on the Rhine would also be acceptable to Germany. The purport of such a pact could be, for instance, that the interested states bound themselves reciprocally to observe the inviolability of the present territorial status on the Rhine; that they furthermore, both jointly and individually ("conjointement et séparément") guaranteed the fulfilment of this obligation; and, finally, that they would regard any action running counter to the said obligation as affecting them jointly and individually. In the same sense, the treaty states could guarantee in this pact the fulfilment of the obligation to demilitarize the Rhineland which Germany has undertaken in Arts. 42 and 43 of the treaty of Versailles. Again, arbitration agreements of the kind defined above between Germany and all those states which were ready on their side to accept such agreements could be combined with such a pact.

To the examples set out above still other possibilities of solution could be linked. Furthermore, the ideas on which these examples are based

[1]Reprinted from "Papers respecting the Proposals for a Pact of Security made by the German Government on February 9, 1925" (Great Britain, Parl. Paps., Miscellaneous No. 7 (1925), Cmd. 2435).

[2]See this Series, Vol. VI, No. 2, p. 106.

could be combined in different ways. Again, it would be worth considering whether it would not be advisable to so draft the security pact that it would prepare the way for a world convention to include all states along the lines of the "Protocole pour le Règlement pacifique de Différends internationaux" drawn up by the League of Nations, and that, in case such a world convention was achieved, it could be absorbed by it or worked into it.

2. Memorandum handed by the President of the Council and Minister for Foreign Affairs to Herr von Hoesch, German Ambassador in Paris, on February 20, 1925.[1]

[Translation.]

The memorandum communicated to the French Government on February 9 by his Excellency the German Ambassador has been examined by them with interest and with a determination not to neglect anything which may contribute to European and world peace. The German Government will understand that the examination of these suggestions can not be continued until France has submitted them to her allies and has come to an agreement with them for the establishment of a system of security within the framework of the treaty of Versailles.

Paris, February 20, 1925.

[Following the transmission of the French memorandum of February 20, the Herriot ministry resigned on April 10, and the cabinet was reconstructed with Paul Painlevé as premier and Aristide Briand as minister of foreign affairs. After considerable consultation with both London and Brussels, the French Government had prepared a draft reply to the German memorandum under date of May 12, which was submitted to the British foreign minister. On May 19, Austen Chamberlain, British secretary of state for foreign affairs, informally communicated a memorandum to the French ambassador at London in which he indicated a very cautious attitude on the part of the London authorities. The memorandum contained very searching questions directed at what were regarded as ambiguities in the French draft. These questions were answered by France in a reply dated May 22, and the British "reasoned comments" were made in a note of May 28, along with which was submitted to France an alternative text which remodeled "the French draft in such a way as to confine it to such a statement of policy as [his Majesty's Government]

[1]*Op. cit.*, 5.

believe is common to both countries and thus to avoid raising particular points of principle in which this country can not *ab initio* concur."[1] On June 4, France replied with a dispatch which appreciated "the frank and friendly tone" of the British reply, and accepted, with editing details, the British proposals. To the text thus negotiated, which follows, has been added a series of notes indicating the alterations made as a result of the exchange of views above described.]

3. Note from the French Government to the German Government handed to Herr Stresemann by the French Ambassador at Berlin on June 16, 1925.[2]

[Translation.]

As they have informed the German Government in their note of February 20 last, the French Government have studied, in common with their allies[3] the suggestions contained in the memorandum forwarded to them on February 9 by his Excellency M. von Hoesch.

The French Government and their allies regard the step taken by the German Government as an earnest of pacific intentions which agree with their own.

Wishing to give to all the states concerned supplementary guaranties of security within the framework of the treaty of Versailles,[4] they have examined the German proposals with all the attention that they merit in order to judge what elements they may afford for the consolidation of peace.

Before embarking. however, on an examination in detail of the German note, it has appeared desirable to set out clearly the questions which it raises, or may raise, and on which it is important to know the views of the German Government because a preliminary agreement concerning them appears to be the necessary basis for any future negotiations:

I.

The memorandum only mentions incidentally the League of Nations. Now the allied states are Members of the League of Nations and are bound by the Covenant of the League, which involves for them

[1]*Op. cit.*, 21. [2]*Op. cit.*, 47.

[3]In response to a British question it was explained "that the intention of the French Government was not to reply in the name of the allies, but in their own name in agreement with their allies" (*Op. cit.*, 16).

[4]By these words, "the French Government meant to specify that the pact proposed by Germany can not in any way contradict, infringe or weaken the treaty of Versailles and represents an offer of complementary guaranties" (*Op. cit.*, 16).

clearly defined rights and obligations with the object of maintaining general peace.

The German proposals no doubt lay claim to the same ideal, but no agreement could be achieved unless Germany on her side assumes the obligations and enjoys the rights laid down in the Covenant of the League.

This agreement, then, can only be conceived if Germany herself enters the League of Nations under the conditions laid down in the note from the Council of the League of Nations, dated March 13, 1925.[1]

II.[2]

The search for the guaranties of security which the world demands can not involve any modification of the peace treaties.

The agreements to be concluded ought not, therefore, either to imply a revision of these treaties or to result in practice in the modification of the conditions laid down for the application of certain of their clauses.

Thus the allies can not in any case give up the right to oppose any failure to observe the stipulations of these treaties, even if the stipulations in question do not directly concern them.

III.

The memorandum of February 9 contemplates first of all the conclusion between the "powers interested in the Rhine" of a pact which might be inspired by the following principles:

1. Repudiation of all idea of war between the contracting states.
2. Strict respect for the existing territorial situation in the Rhineland, with a joint and several guaranty by the contracting states.
3. A guaranty by the contracting states of the execution of the obligations concerning the demilitarization of the Rhineland which Germany has undertaken under Arts. 42 and 43 of the treaty of Versailles.

The French Government do not fail to appreciate the value to the cause of peace, side by side with a renewed affirmation of the principles inscribed in the treaty of Versailles, of a solemn repudiation of all idea of war (an undertaking which, moreover, ought not to contain any time-limit) between the contracting states.

[1]League of Nations, *Official Journal*, VI, p. 490.

[2]"The object of Sec. II," said the French note of May 22, "is to state a reservation of general scope concerning the whole of the clauses of the Covenant of the League of Nations and of the peace treaty so as to make it clear that the agreements contemplated in the German memorandum must not impair them in any way whatsoever." (*Op. cit.*, 16.)

Those states must clearly include Belgium,[1] who is not expressly named in the German memorandum and who ought to be a party to the pact as a state directly interested.

It also goes without saying, and, further, results from the silence on this point of the German memorandum, that the pact to be concluded on these lines could not affect the provisions of the treaty relative to the occupation of the Rhineland,[2] nor the execution of the conditions laid down in relation thereto in the Rhineland agreement.

IV.

The German Government next declare themselves prepared to conclude with France and with the other states parties to the Rhineland pact

[1]The British note of May 28 specifically indorsed the reference to Belgium, and added: "Without her inclusion the proposed pact would obviously be incomplete. This is so self-evident that the omission of Belgium's name from the German proposals can only have been due to an oversight, as, indeed, the German Government have since explained." (*Op. cit.*, 21.)

[2]The occupation of the Rhineland is provided for as follows in the treaty of Versailles:

"Art. 428. As a guaranty for the execution of the present treaty by Germany, the German territory situated to the west of the Rhine, together with the bridgeheads, will be occupied by allied and associated troops for a period of 15 years from the coming into force of the present treaty. [January 10, 1920.]

"Art. 429. If the conditions of the present treaty are faithfully carried out by Germany, the occupation referred to in Art. 428 will be successively restricted as follows:

"(1) At the expiration of five years there will be evacuated: the bridgehead of Cologne and the territories north of a line running along the Ruhr, then along the railway Jülich, Düren, Euskirchen, Rheinbach, thence along the road Rheinbach to Sinzig, and reaching the Rhine at the confluence with the Ahr; the roads, railways and places mentioned above being excluded from the area evacuated.

"(2) At the expiration of ten years there will be evacuated: the bridgehead of Coblenz and the territories north of a line to be drawn from the intersection between the frontiers of Belgium, Germany and Holland, running about from 4 kilometers south of Aix-la-Chapelle, then to and following the crest of Forst Gemünd, then east of the railway of the Urft Valley, then along Blankenheim, Valdorf, Dreis, Ulmen to and following the Moselle from Bremm to Nehren, then passing by Kappel and Simmern, then following the ridge of the heights between Simmern and the Rhine, and reaching this river at Bacharach; all the places, valleys, roads and railways mentioned above being excluded from the area evacuated.

"(3) At the expiration of 15 years there will be evacuated: the bridgehead of Mainz, the bridgehead of Kehl and the remainder of German territory under occupation.

"If at that date the guaranties against unprovoked aggression by Germany are not considered sufficient by the allied and associated Governments, the evacuation of the occupying troops may be delayed to the extent regarded as necessary for the purpose of obtaining the required guaranties."

arbitration[1] treaties guaranteeing "a peaceful settlement of juridical and political conflicts."

France considers that an arbitration treaty of the kind which Germany proposes[2] would be the natural complement of a Rhineland pact. But it must be understood that, as between France and Germany, such a treaty ought to[3] apply to all disputes, and ought not to leave room for coercive action save where such action shall be undertaken consistently with the provisions of treaties in force between the parties, or of the Rhineland pact or in virtue of the guaranty given to an arbitration treaty by the parties or by any one of them. An arbitration treaty of the same kind between Belgium and Germany would be no less necessary.

[1]The British inquired on May 19: "What exactly do the French Government understand by the term 'arbitration' in this respect? Is it contemplated that there shall be a settlement of a *judicial* nature in every case to the exclusion, for instance, of the procedure of settlement by the Council laid down by the Covenant of the League of Nations? Or do the French Government include 'conciliation' in the general term 'arbitration' used in their draft?" (*Op. cit.*, 12).

The reply of May 22, stated that "the French Government have taken the word 'arbitration' in the most general sense, meaning by it an attempt to exclude solutions by force. . . . In all cases the obligatory nature of settlement by peaceful means must be specially affirmed and enshrined. There is, moreover, no question of encroaching upon the prerogatives of the Council of the League of Nations. The only condition which appears essential to the French Government is that the pacific solution obtained shall have the character of an obligatory decision." (*Op. cit.*, 17.)

[2]This phrase originally read "that such arbitration treaties." The British explained that this change in the revised version "refers only to a possible Franco-German treaty, thus leaving all other allies free to decide whether or not to conclude a similar arbitration treaty with Germany. At the same time the hope is expressed that Belgium will be disposed to enter into a similar treaty." (*Op. cit.*, 21–22.)

With respect, however, to the British omission of the obligation for herself, the reply to the note of May 28 had previously stated: "They therefore welcome any treaties of arbitration or conciliation which the continental powers concerned may be prepared to enter into, provided only that such treaties do not affect the rights and obligations attaching to membership of the League of Nations under the Covenant. But the position of His Majesty's Government is somewhat different from that of those powers. In view of the position of the British Empire, with its world-wide responsibilities, His Majesty's Government are bound to regard the question of participation in treaties of this description from a different point of view to that of powers whose interests lie mainly or exclusively in Europe. And as regards the proposals for the maintenance of peace which are now under discussion, His Majesty's Government feel that, while for the continental powers concerned the conclusion of the suggested arbitration treaties forms, as is stated in the French draft reply, the natural complement of a Rhineland pact, this is not equally the case with Great Britain." (*Op. cit.*, 20.)

[3]The phrase "as between France and Germany, such a treaty ought to" is a French revision of the British alternative for the reasons stated in the previous note.

To give full effect to these two treaties, their observance ought to be assured by the joint and several guaranty of the powers[1] which also participate in the territorial guaranty contained in the Rhineland pact, so as to bring this guaranty into immediate operation, if one of the parties, refusing to submit a dispute to arbitration or to carry out an arbitral award, resorts to hostile measures.[2]

Where one of the contracting parties, without resorting to hostile measures, fails to observe its undertakings, the Council of the League of Nations shall propose what steps should be taken to give effect to the treaty.[3]

V.

In their memorandum the German Government added that they

[1]The French note of May 22 discussed this phrase at length:

"(*b*) A distinction must be drawn between a territorial guaranty and a guaranty given to an arbitration treaty. The first applies in case of the violation of a territory and necessarily involves resort to force in defense of that territory.

"The guaranty of an arbitration treaty, on the other hand, does not necessarily take that form. It infers any means, diplomatic or other, appropriate to the nature of the violation. We have purposely avoided defining its nature or extent. It goes without saying that in such a case each of the guarantors acts in such measure as he is able.

"If, for example, Germany were to violate the arbitration treaty with Poland, Great Britain could not be automatically drawn in to a greater extent than is involved, in the first place, by the guaranty which she has given to the arbitration treaty under the conditions laid down above, and, in the second place, by her capacity as a Member of the League of Nations. In return, France could not be deemed to violate the Rhineland pact if she should be called upon to help Poland.

"This very example demonstrates the necessity of making simultaneous the eventual conclusion of a Rhineland pact with the conclusion of arbitration treaties between Germany and the neighboring allied states, as indeed Germany herself proposes." (*Op. cit.*, 17–18.)

[2]The two final paragraphs of Sect. IV took this form in view of a French explanation which called forth the following statement in the British note of May 28: "Though His Majesty's Government are not prepared to go so far as the French Government suggest, yet they are prepared *in principle* (and of course, subject to a careful examination of the actual terms ultimately proposed) to give a guaranty, flowing logically from the territorial guaranty of the Rhineland, of arbitration treaties which may be concluded between Germany and her western neighbors, signatories of the pact. The type of guaranty which they have in mind would operate in the event of a failure on the part of one of the parties to refer a dispute to arbitration (using the term in its widest sense to cover both judicial awards and conciliation tribunals) or to carry out an award, if such failure were coupled with a resort to hostilities. The guaranty would be, so to speak, defensive; it would not entail upon His Majesty's Government—as they conceive it—any obligation to resort to force elsewhere than in the areas covered by the proposed Rhineland pact; and would not operate in any event in favor of the party which had refused arbitration or had refused to give effect to an arbitral award." (*Op. cit.*, 20.)

[3]*Ibid.*

were ready to conclude with all states who were so disposed arbitration treaties of the same kind.

The allied Governments note this assurance with satisfaction. They even consider that in the absence of such agreements between Germany and those of her neighbors who, without being parties to the suggested Rhineland pact, are signatories of the treaty of Versailles, the peace of Europe, which the Rhineland pact tends to consolidate and of which it is to constitute an essential element, could not be completely guaranteed.[1]

The allied states, in fact, have, under the Covenant of the League of Nations and the treaties of peace, rights which they can not possibly give up and obligations of which they can not possibly divest themselves.

These arbitration treaties thus conceived would have the same scope as those contemplated in Sect. IV. The powers signatories of the treaty of Versailles and of the proposed Rhineland pact would have the option, if they so desire, of constituting themselves the guarantors of such arbitration treaties.[2]

VI.

Nothing in the treaties contemplated in the present note should affect the rights and obligations attaching to membership of the League of Nations under the Covenant of the League.[3]

VII.

The general guaranty of security necessary for the maintenance of

[1]The original French draft closed this sentence with the statement that "the object aimed at by the pact could not be attained nor the peace of Europe completely guaranteed." The British proposed a revision because the words of this clause "were unnecessarily pessimistic." (*Op. cit.*, 22.)

[2]The paragraph originally read in the French draft: "The arbitration treaties thus conceived would have the same scope as those contemplated in paragraph IV and would be backed by the same joint and several guaranty." The British suggested the omission of this paragraph in their note of May 28 because it was regarded as "unacceptable to His Majesty's Government." (*Op. cit.*, 22.) The French proposed a modified form on June 4, with the explanation that the revision left "England and the other powers signatory of the Rhineland pact quite free to withhold their guaranty from arbitration treaties between Germany and her eastern or southern neighbors" and that it aimed "at giving France the right to guarantee these treaties herself so as to insure their full effectiveness and to remove still further the possibility of forcible intervention." (*Op. cit.*, 37.)

[3]The original French draft contained the following two paragraphs:

"In the opinion of the French Government the general guaranty of security necessary for the maintenance of peace can not be effectively assured unless the agreements contemplated in the present note form an indivisible whole.

peace can not be completely insured unless all the agreements aimed at in the present note come into force simultaneously.[1]

These agreements, in conformity with the Covenant, ought to be registered by the League of Nations and placed under its auspices.

Finally, it goes without saying, that, if the United States were to find it possible to associate themselves with the agreements which would thus be realized, France would be only too happy to see the great American nation participate in this work of general peace and security.[2]

Such are the principal points on which it has appeared necessary to obtain precise knowledge of the views of the German Government.

The French[3] Government would be glad to receive a reply on this subject which will permit the opening of negotiations with the object of concluding agreements which will constitute a new and effective guaranty of peace.

4. Reply of the German Government to the Note handed to Herr Stresemann by the French Ambassador at Berlin on June 16, 1925.[4]

[Translation.]

The German Government have thoroughly examined the reply to the German memorandum of February 9, which was delivered by his Ex-

"They consider therefore that all the agreements, the observance of which should in each case be guaranteed by the signature of the same powers, ought to be coordinated in a general convention registered by the League of Nations, placed under the auspices of the League and capable of forming, as suggested in the German memorandum itself, the nucleus of a still more general pacific entente." (*Op. cit.*, 10 and 27.)

[1]*Ibid.*

[2]This paragraph refers to a passage in the German note of February 9, 1925, in which the suggestion was made of an obligation "*vis-à-vis* the Government of the United States as trustee." Inquiry of the Department of State relative to absence of any further references to this suggestion later than the note of June 16 brought from the Chief of the Division of Western European Affairs a reply of which the following is the substance (WE:751.6211/204):

"In reply, I would inform you that no request has ever been addressed to this Government to act as 'trustee' for the Security Pact between France and Germany and consequently no note outlining the policy of the United States in this respect has ever been issued."

[3]On a British suggestion the original reference to "the allied Governments" at this point was confined to the French Government.

[4]Reprinted from Miscellaneous No. 9 (1925), Cmd. 2468. The note was covered to the British foreign secretary by the following:

"German Embassy, London, July 20, 1925.

Your Excellency,

On behalf of my Government, I have the honor to transmit to you herewith copy of the note from the German Government which Herr von Hoesch, the German ambassador, is this day handing to the French Government in reply to the

cellency the French Ambassador M. de Margerie on June 16. They gather from it with satisfaction that the French Government and their allies are disposed in principle to cooperate with the German Government for the consolidation of peace by way of mutual understanding and to enter into an exchange of views about the matter.

Before, however, embarking on an examination in detail, the allied Governments wish the questions touched upon in the German memorandum to be further elucidated, and for their part make a number of concrete proposals, upon which they ask the German Government to state their view. Although these proposals are based on the suggestions of the German memorandum, yet they give them another direction on important points and also add to them new constructions. The German Government, animated by the same spirit of good will and peaceful understanding which prompted their own suggestions, will state their opinion about the allied proposals as follows. In doing this, however, they believe that they should confine themselves to a general statement on some questions of principle and reserve their attitude on points of detail for the final negotiations to come:

I.

The allied Governments in their note of June 16 emphasize that settlement of the question of security must not involve modification of the treaties of peace. The German Government can not clearly make out from what is said in the note about this point what the intentions of the allied Governments are. The conclusion of a pact of security, as outlined in the German suggestions, does not represent modification of existing treaties. There should, therefore, be no need for special statements in this respect. The German Government consider as self-evident that it is not meant to exclude for all future time the possibility of adapting existing treaties at the proper time to changed circumstances by way of peaceful agreement. They may point out that even the Covenant of the League of Nations allows for such necessities.

If the allied Governments emphasize, for instance, that the pact of security must not effect the treaty provisions in force concerning the military occupation of German territories, it is correct that the German memorandum has not made the conclusion of the pact dependent upon a modification of those provisions. But should the allied Governments intend to set those provisions up as sacrosanct for the future, the German Government would, in answer to this, like to point out that the conclusion

French note of June 16. I venture to inclose a translation of the German reply in the English language, but have the honor to observe that the German text is to be regarded as decisive. I have, etc.,

STHAMER."

of the security pact would represent an innovation of such importance it could not but react on the conditions in the occupied territories and the questions of occupation in general.

II.

Under the system outlined by the allied Governments for the security pact in their note of June 16, a prominent part is assigned to the treaties of arbitration which Germany would have to conclude with her neighbor states who are signatories of the treaty of Versailles. The construction of the treaties of arbitration within this system leaves room for considerable doubts which need further elucidation. The German Government contemplated treaties of arbitration such as have been concluded during the last few years by Germany, as well as by a number of other powers. Treaties of this kind, modeled on the corresponding terms of the Covenant of the League of Nations, exhaust, in the opinion of the German Government, the possibilities existing under present conditions of bringing about, with prospects of practical results, the arbitral settlement of conflicts among states. The allied proposals appear to contemplate a different system. What chiefly attracts attention are the cases of exception provided for by the allied Governments, in which coercive action by one state against another state is to be permitted. In this respect, the German Government, judging by the terms of the note of June 16, and the correspondence published between the French and his Britannic Majesty's Governments, can not but assume that in those cases, in the opinion of the allied Governments, coercive action can take place without any regular procedure laid down in advance, either by arbitral or some other international procedure.

If this is correct, the result would be that the allied Governments, for instance, would not wish to subject a decision on the question of the admissibility or inadmissibility of reprisals on account of reparation obligations to the regular procedure, but would leave the decision to their own unilateral discretion. A further result would be that the German Government would by treaty have to concede the allied Governments' right to take military measures against Germany without any preceding regular procedure, whenever they are of the opinion that Germany had infringed the provisions regarding demilitarization of the Rhineland.

Just as serious would be the consequences which might result from the form, as proposed by the French note, of a guaranty for the treaties of arbitration, the conclusion of which is suggested. Although the intervention of the guarantor would be dependent upon definite conditions, he would nevertheless be entitled to decide on his own free judgment

whether, in the case under consideration, these conditions, in fact, exist. This would mean that should a conflict arise it would be for the guarantor to decide which of the two contracting parties to the treaty of arbitration is to be considered the aggressor, and he would have the right to decide, even if he was bound to one of the contracting parties by special alliance.

It is quite clear that the system of guaranties would, by such constructions, be invalidated to the sole detriment of Germany. Real pacification as aimed at by the German Government in concert with the allied Governments would not be reached. The German Government, therefore, hope that their misgivings concerning these points can be removed by the allied Governments. They believe that they can all the more expect this as otherwise the guaranty system could not be brought into harmony with the spirit of the Covenant of the League of Nations. Whereas, according to the Covenant, the question whether disturbance of the peace exists has to be decided by a carefully regulated procedure and the application of coercive measures is subject to conditions which have to be conclusively established, all these decisions, according to the system outlined in the French note, would be put into the hands of one of the contracting parties. Such a system would not maintain peace and might even give rise to the danger of serious complications.

III.

According to the opinion of the German Government, the entrance of Germany into the League of Nations would not be a necessary condition for the realization of the fundamental ideas of the German memorandum. The allied Governments, however, on their part, are of the opinion that the security pact as suggested in Germany's memorandum is only conceivable if Germany enters the League of Nations. In view of the great importance which the German Government attach to the solution of the security question they will, in principle, not raise any objection against the linking up of the two problems. They must, however, draw attention to the fact that the question of Germany's entry still needs to be carefully cleared up.

The standpoint of the German Government on this question is known to the allied Governments from the memorandum handed to them in September last, as well as from the German note addressed to the League of Nations on December 12 last.[1] The note of the Council of the League of Nations of March 13 last, mentioned in the French note, has not removed the objections that have been expressed by Germany against the acceptance of obligations under Art. XVI of the Covenant. Even after

[1]League of Nations, *Official Journal*, VI, p. 323.

the explanations by the Council of the League of Nations, the danger remains that Germany, as a disarmed country, surrounded by strongly armed neighbors, in a central position, having been in history repeatedly the theater of great wars, would, after entering the League of Nations, be exposed without limitation to the danger of being involved in the armed conflicts of third countries.

Germany as a Member of the League of Nations can only be considered as enjoying equal rights when her disarmament is followed by the general disarmament provided by the Covenant of the League of Nations and the preamble to Part V of the treaty of Versailles. Therefore, if the immediate entrance of Germany into the League of Nations is to be rendered possible, a solution has to be found to tide over the time till general disarmament has become a reality. This solution would have to pay due regard to the special military and economic as well as the special geographical situation of Germany.

With regard to the contents of the note of June 16, the German Government wish to confine themselves for the present to these remarks. In spite of the doubts and apprehensions indicated, they are able to note that on essential points a significant rapprochement of the views of the two sides has already taken place. The interested Governments are, in principle, unanimous in the earnest desire to settle the security problem by a guaranty pact as suggested by Germany, and by further development of the system of arbitration treaties. Where there still exist doubts and differences of opinion concerning the details of such a settlement, these also can be overcome, if the Governments keep their eyes fixed firmly on the goal to be reached and do not lose sight of the indispensable requirements of equality and reciprocity. The German Government, therefore, believe they are justified in hoping that further discussions will lead to a positive result. They would heartily welcome an acceleration of these discussions so that the urgent desire of the nations for reliable guaranties of peace and peaceful development, as well as for the restoration of the world's normal economic relations destroyed by the war, may soon be satisfied.

PARIS, July 20, 1925.

5. NOTE OF THE FRENCH MINISTER OF FOREIGN AFFAIRS IN REPLY TO THE GERMAN RESPONSE, AUGUST 24, 1925.[1]

[Translation]

The French Government have given careful consideration to the German note of July 20, 1925. They are glad to observe the community of views which exists between the two Governments, and to realize that

[1]London *Times*, August 27, 1925, p. 9; New York *Times*, August 27, p. 4.

the German Government are as anxious as they are themselves to see the peace of Europe based upon an understanding which will insure to the several countries supplementary guaranties of security. They note with satisfaction that the German Government, after a careful study of the French note of June 16, express their conviction that agreement is possible.

The French Government, desirous of not delaying such an agreement, will confine themselves to such observations as an examination of the three essential points of the German note have suggested to them in common with their allies. The German Government, in passing over in silence certain questions raised by the French reply of June 16, desire apparently to intimate that they see no objection of principle thereto, but wish only to reserve their right to discuss the points of details.

I.

The French Government are happy to note that the German Government do not seek to subordinate the conclusion of a pact of security to a modification of the provisions of the treaty of peace.

The German Government, however, twice draw attention to the eventual possibility of concluding agreements under which the existing treaties might be adapted to changed circumstances and invoke, moreover, certain provisions of the Covenant. They also suggest the hypothesis of a modification of the conditions of the Rhineland occupation.

The French Government are well aware of the provisions of the treaty to which the German note makes reference. Nor, in their respect for international undertakings, have they any intention of evading any of the provisions of the Covenant. They would, however, remind the German Government that the Covenant is itself primarily founded on a scrupulous respect for treaties which form the basis of public law in Europe, and that it defines as the first condition of the entry of a state into the League of Nations a sincere intention on the part of that state to observe its international obligations.

In agreement with their allies, the French Government consider that the treaty of peace and the rights which Germany as well as the allies possess thereunder must not be impaired; nor can the guaranties of its execution and the provisions which govern the application of these guaranties (and in certain cases contemplate their alleviation) be modified by proposed agreements, any more than the treaty itself can be modified.

However liberal the spirit, however pacific the intentions with which France is ready to guide the present negotiations, she can not surrender her rights; and it is for this reason that the French note of June 16 specified that the security pact could not "affect the provisions of the treaty rela-

tive to the occupation of the Rhineland nor the execution of the conditions laid down in relation thereto in the Rhineland agreement." The French Government, however, hereby renew, in so far as they are concerned, the declaration already made by the allies to the effect that they intend scrupulously to observe their obligations.

II.

The allies are convinced that membership of the League of Nations would provide Germany, once she has entered the League, with the most efficacious method of establishing her requirements as other states have done in regard to their own interests. The entry of Germany into the League of Nations is the only solid basis of a mutual guaranty and a European agreement. It is not, in fact, from outside that a state can properly express reservations, which would thus assume the character of condition; it is from within that it can submit its wishes to the Council in the exercise of right common to all states that are Members of the League. It is thus with regret that we have read the reservations in the German note declaring that the question of Germany's entry into the League of Nations required to be further elucidated on the ground that the note dated March 13, 1925, from the Council of the League of Nations had not, according to the German Government, removed their objections.

The French Government are not qualified to speak in the name of the League of Nations. The Council, having had before them the reservations formulated by Germany, have acquainted the German Government with their decision. This decision was based on the principle of equality between nations, an equality which implies neither exception nor privilege in favor of any one of them.

So far as they are concerned, the allied Governments can only adhere to their former statements and repeat that the entry of Germany into the League of Nations under the same conditions as are prescribed for everybody remains in their opinion the basis of any understanding on security. It is precisely the absence of such security which has hitherto blocked the initiation of that process of general disarmament which was provided for in the Covenant, and to which the German note alludes.

III.

The German Government have formulated certain reservations regarding the scope and character of the arbitral conventions to be concluded between Germany, on the one hand, and, on the other, either France or Belgium, signatories of the Rhineland pact, or Germany's other neighbors,

signatories of the treaty of Versailles. These reservations are of such a nature as to limit the obligatory character of these conventions by conforming them to the treaties of arbitration which Germany has already concluded with some of her neighbors. These treaties imply resort in all cases to a permanent conciliation board, but the actual arbitral settlement provided for thereunder, while applying to the generality of cases, does not cover the most important, *i.e.*, those of a political nature, which are precisely those most liable to lead to war.

By such a procedure the provisions of the original German memorandum of February 9, 1925, which contemplated the conclusion of arbitration treaties which would guarantee the peaceful solution of political as well as of juridical disputes, would be dangerously restricted. In the opinion of the allies, an arbitration convention thus limited in that it would not apply to all disputes between limitrophe powers, would not be of sufficient value as a guaranty of peace; it would still leave open certain opportunities for war. Our primary object is to render impossible, under the conditions formulated in the note of June 16, any fresh resort to force. We feel that this object can only be attained by means of some obligatory pacific settlement applying to all the issues which may arise. In our opinion, the principle of compulsory arbitration thus conceived is an indispensable condition for any pact of the nature proposed by the German Government in their note of February 9.

The apprehensions which the German Government betray on the subject of the guaranty of an arbitration convention will scarcely withstand objective criticism. Under the system contemplated, the guarantor does not decide autocratically and unilaterally who is the aggressor. The aggressor defines himself by the very fact that, instead of submitting to a pacific solution, he resorts to arms, or violates either a frontier, or, in the case of the Rhine, the demilitarized zone. It is obvious that the guarantor, who will have the greatest interest in preventing such violations from whichever side they come, will, at the first sign of danger, be sure to exercise all his influence for that purpose. Moreover, it will be the business of the limitrophe states themselves to see to it that this system of guaranty, conceived for their mutual protection, does not work out to their disadvantage. As for the system of guaranteeing an arbitration convention, it proceeds directly from the idea which was pronounced consistent with the spirit of the Covenant by the Assembly of the League of Nations at its last session in Geneva.

It would not seem impossible to establish provisions adapting the operation of the guaranty (whoever be the guarantor and whether the guaranty applies to frontiers or to arbitration) to the nature of the violation and to the circumstances and the degree of urgency which might necessitate the immediate execution of this guaranty. In this connection,

an examination might be made whether some means could not be found of safeguarding the impartiality of the decisions come to, without diminishing the immediate and efficacious operation of the guaranty itself.

To sum up, on the three essential points of the German note of July 20, 1925, the French Government, in agreement with their allies, and without claiming to evade the legitimate application of any of the provisions of the Covenant of the League of Nations, can only confirm their earlier remarks on the need for the scrupulous respect of the treaties. They are not qualified to discuss the questions concerning the admission of Germany into the League of Nations, on which the Council of the League have come to a decision; finally, they trust that the proposed guaranties are capable of being laid down in terms both just and reasonable, and such as will not expose them to interpretations and applications which may be improper and unjustified.

The French Government in agreement with their allies, are conscious of the difficulties and of the delays involved in the continuation, by the exchange of notes, of the negotiations on such delicate questions. It is for this reason, while again drawing attention to their note of June 16, they confine themselves to these general observations without going into further details.

Such are the preliminary explanations which the French Government have to offer; they are tendered in all sincerity and their purpose is to remove all possibility of misunderstanding. The French Government, in agreement with their allies, have now the honor to invite the German Government to enter into negotiations on this basis—negotiations which they, for their part, earnestly trust will result in the conclusion of a definitive treaty.

PARIS, August 24, 1925.

6. GERMAN REPLY OF AUGUST 27, 1925, TO THE FRENCH NOTE OF AUGUST 24.[1]

[Translation.]

The German Government have the honor to acknowledge receipt of the French note of August 24.

They entirely share the opinion expressed at the end of the above note that a continuation of correspondence is scarcely calculated to lead to further elucidation of the questions connected with the conclusion of a security pact, and in their note of July 20 they had given expression to the desire that discussions might be expedited as much as possible. The

[1]London *Times*, August 29, 1925, p. 10.

German Government, therefore, welcome the suggestion made verbally by his Excellency, the French ambassador, that the legal experts of Germany, Belgium, France and Great Britain might meet as soon as possible in order to afford the German experts an opportunity to become acquainted with the views of the allied experts regarding the legal and technical aspects of the problems under discussion.

In these circumstances the German Government, having in the note of July 20 defined their attitude concerning a number of the most important matters, now consider it advisable to refrain from further written elucidation of these matters and from stating their views in regard to the observations made in the French note.

7. Invitation to the German Government to meet in conference, transmitted on behalf of Belgium, France and Great Britain, by the Ambassadors at Berlin, September 15, 1925.[1]

When he handed the note of August 24 last to M. Stresemann, the French ambassador was instructed to make known to the minister of foreign affairs that the French Government, in agreement with its allies, thought it would be convenient, provided that its above-mentioned note should have a favorable reception with the German Government, to hasten the opening of negotiations entered upon by the meeting of juristic experts, and later by a meeting of the ministers of the foreign affairs of the interested states.

After the conference which the jurists have just had at London,[2] it would appear to the French Government and to its allies, that the nations concerned have a common interest in the negotiations no longer being postponed, and that the time has come to fix a date for the proposed meeting.

For this purpose the end of the month of September or, at the latest, the early days of the month of October would be a convenient time. The conference should take place in neutral territory, preferably in Switzerland, at a place which would be fixed later by agreement of the Governments.

The French Government and its allies firmly hope that these proposals will coincide with the desires of the German Government and that the latter will accordingly within a short time make known its acceptance of them.

[1]Translated from *Le Temps*, September 18, 1925.

[2]Experts of Belgium, France, Great Britain and Germany exchanged views at London, September 1–4, 1925.

8. Aide-Mémoire Delivered to the British and French Ministers of Foreign Affairs by the German Ambassadors at London and Paris, respectively.[1]

[2]London, September 26, 1925.

Sir: By instruction from my Government I have the honor to inform your Excellency of the following:

The German Government have the honor to state, in reply to the note of September 15, communicated by the British chargé d'affaires, that they entirely share the desire of the allied Governments not to protract negotiations for the conclusion of a security pact. They also trust that the final settlement of the problems under discussion will be expedited by a meeting of members of the Governments of the states concerned, and they therefore, in accordance with their note of August 27 last, agree to the proposal that this meeting should take place immediately. They suggest October 5 as the date for the meeting planned to take place in Switzerland.

I have, etc., Sthamer.

9. French Acknowledgment of the German Aide-Mémoire.[3]

Paris, September 29, 1925.

Your Excellency:

The Government of the Republic has been happy to receive the reply by which the German Government has informed it of its acceptance of the meeting of the conference of Locarno.

It notes that this acceptance does not imply any reservation.

The verbal declaration made at the same time by the ambassador of Germany refers to two questions which could in no way be brought into the negotiations at Locarno, for they have no relation to the discussion of the security pact.

As regards the first of these observations, the French Government considers that the question has been settled by the treaty of Versailles, to which, as it has clearly indicated in its notes, the negotiation of the security pact could not bring any modification.

As regards the evacuation of the Cologne zone and the question of the disarmament of Germany, to which it is pledged, the French Government recalls that it depends solely upon Germany herself to hasten its

[1]London *Times*, September 30, 1925, p. 12.

[2]*Mutatis mutandis* to Paris and Brussels.

[3]Translated from *Le Temps*, October 1, 1925.

solution by the execution of her engagements, and can only refer in this connection to the allied note of May 30, 1925.[1]

The French Government takes note of the fact that the German Government is in agreement with it upon this point: namely, that the verbal observations formulated in the German aide-mémoire must not be regarded as involving either preliminary conditions or reservations with respect to the conference.

BRIAND.

10. BRITISH ACKNOWLEDGMENT OF THE GERMAN AIDE-MÉMOIRE.[2]

LONDON, September 29, 1925.

Your Excellency:

His Majesty's Government have received with pleasure the acceptance by the Government of the Reich of the proposal for a conference on October 5 at Locarno. His Majesty's Government notes with satisfaction that the acceptance is given without reserve.

In reply to the declaration which your Excellency made to me at the same time, I have the honor to take note of the assurance of your Excellency that the questions therein raised do not constitute conditions preliminary to a meeting of foreign ministers.

These questions have, in fact, no relation to the negotiations for a security pact and have formed no part of the preliminary exchange of views.

As regards that part of the declaration which deals with Germany's entry into the League of Nations, his Majesty's Government notes with satisfaction that the German Government raise no objection to this essential condition of any mutual pact. The question of Germany's responsibility for the war is not raised by the proposed pact, and his Majesty's Government are at a loss to know why the German Government have thought it proper to raise it at this moment. His Majesty's Government are obliged to observe that the negotiation of a security pact can not modify the treaty of Versailles or alter their judgment of the past.

As regards the evacuation of the Cologne zone, I have the honor to repeat that the date of that evacuation depends solely on the fulfilment of Germany's disarmament obligations, and that his Majesty's Government will welcome performance of those obligations as permitting the allies at once to evacuate the northern zone.

For the Secretary of State:

VICTOR WELLESLEY.

[1]The note presented to the German Government on June 4, detailing conditions to be met, is referred to.

[2]London *Times*, September 30, 1925, p. 12.

11. Belgian Declarations to the German Minister at Brussels, September 26, 1925.[1]

The Belgian Government is happy to receive the note by which the Government of the Reich accepts the invitation addressed to it to participate in the conference of Locarno, October 5 next. It notes with satisfaction that this acceptance does not involve any reservation. In reply to the declarations with which your Excellency has accompanied the transmission of this note, without making them a condition of the German acceptance, the Belgian Government believes it possible to outline the following observations:

So far as concerns the evacuation of the Cologne zone and the question of the disarmament of Germany, the Belgian Government permits itself to observe that it depends upon the German Government itself to hasten the solution which it desires by the execution of the engagements which have been recalled to it by the note of June 4, 1925.

As regards the question of the responsibility of Germany in the war, it is not raised by the project of a pact. Furthermore, so far as Belgium is concerned, it has been settled not only by the treaty of Versailles but also by the declarations of Chancellor von Bethmann-Hollweg in the Reichstag August 4, 1914.[2]

[1]Translated from *Le Temps*, October 1, 1925.

[2]The declarations referred to are translated as follows, in *Collected Diplomatic Documents relating to the outbreak of the European War* (Miscellaneous, No. 10. 1915. Cd. 7860), p. 317:

"We are in a state of legitimate defense, and necessity knows no law.

"Our troops have occupied Luxemburg and have perhaps already entered Belgium. This is contrary to the dictates of international law. France has, it is true, declared at Brussels that she was prepared to respect the neutrality of Belgium so long as it was respected by her adversary. But we knew that France was ready to invade Belgium. France could wait; we could not. A French attack upon our flank in the region of the lower Rhine might have been fatal. We were, therefore, compelled to ride roughshod over the legitimate protests of the Governments of Luxemburg and Belgium. For the wrong which we are thus doing, we will make reparation as soon as our military object is attained.

"Anyone in such grave danger as ourselves, and who is struggling for his supreme welfare, can only be concerned with the means of extricating himself; we stand side by side with Austria."

The speech is translated in full in *The Times Documentary History of the War*, II, 353–57.

II. THE CONFERENCE OF LOCARNO, OCTOBER 5–16, 1925

No. 1.

Final Protocol of the Locarno Conference.[1]

Signed at Locarno, October 6, 1925; deposited with the Secretariat of the League of Nations, December 14, 1925; registered with the Secretariat, League of Nations, September 14, 1926.

[Translation.]

The representatives of the German, Belgian, British, French, Italian, Polish and Czechoslovak Governments, who have met at Locarno from October 5 to 16, 1925, in order to seek by common agreement means for preserving their respective nations from the scourge of war and for providing for the peaceful settlement of disputes of every nature which might eventually arise between them.

Have given their approval to the draft treaties and conventions which respectively affect them and which, framed in the course of the present conference, are mutually interdependent:

Treaty between Germany, Belgium, France, Great Britain, and Italy (Annex A).

Arbitration convention between Germany and Belgium (Annex B).
Arbitration convention between Germany and France (Annex C).
Arbitration treaty between Germany and Poland (Annex D).
Arbitration treaty between Germany and Czechoslovakia (Annex E).

These instruments, hereby initialed *ne varietur*, will bear today's date, the representatives of the interested parties agreeing to meet in London on December 1 next, to proceed during the course of a single meeting to the formality of the signature of the instruments which affect them.

The Minister for Foreign Affairs of France states that as a result of the draft arbitration treaties mentioned above, France, Poland and Czechoslovakia have also concluded at Locarno draft agreements in order reciprocally to assure to themselves the benefit of the said treaties. These agreements will be duly deposited at the League of Nations, but M. Briand holds copies forthwith at the disposal of the powers represented here.

The Secretary of State for Foreign Affairs of Great Britain proposes that, in reply to certain requests for explanations concerning Art. 16 of the Covenant of the League of Nations presented by the Chancellor and

[1]Reprinted from Great Britain, Parliamentary Papers, Miscellaneous No. 11 (1925). Cmd. 2525.

the Minister for Foreign Affairs of Germany, a letter, of which the draft is similarly attached (Annex F), should be addressed to them at the same time as the formality of signature of the above-mentioned instruments takes place. This proposal is agreed to.

The representatives of the Governments represented here declare their firm conviction that the entry into force of these treaties and conventions will contribute greatly to bring about a moral relaxation of the tension between nations that it will help powerfully toward the solution of many political or economic problems in accordance with the interests and sentiments of peoples, and that, in strengthening peace and security in Europe, it will hasten on effectively the disarmament provided for in Art. 8 of the Covenant of the League of Nations.

They undertake to give their sincere cooperation to the work relating to disarmament already undertaken by the League of Nations and to seek the realization thereof in a general agreement.

Done at Locarno, October 16, 1925.

LUTHER.
STRESEMANN.
EMILE VANDERVELDE.
ARIS. BRIAND.
AUSTEN CHAMBERLAIN.
BENITO MUSSOLINI.
AL. SKRZYNSKI.
EDUARD BENEŠ.

ANNEX A.

TREATY OF MUTUAL GUARANTY BETWEEN GERMANY, BELGIUM, FRANCE, GREAT BRITAIN AND ITALY.

Initialed at Locarno, October 16, 1925; signed at London, December 1, 1925; deposited with the Secretariat of the League of Nations, December 14, 1925; ratifications deposited with Secretariat, League of Nations, by Germany, Belgium, France, Great Britain, Italy, September 14, 1926; entered into force, September 14, 1926; registered at the League of Nations, September 14, 1926.

[Translation.]

The President of the German Reich, his Majesty the King of the Belgians, the President of the French Republic, and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, Emperor of India, his Majesty the King of Italy;

Anxious to satisfy the desire for security and protection which animates the peoples upon whom fell the scourge of the war of 1914–18;

Taking note of the abrogation of the treaties for the neutralization of Belgium, and conscious of the necessity of insuring peace in the area which has so frequently been the scene of European conflicts;

Animated also with the sincere desire of giving to all the signatory powers concerned supplementary guaranties within the framework of the Covenant of the League of Nations and the treaties in force between them;

Have determined to conclude a treaty with these objects, and have appointed as their plenipotentiaries:

Who, having communicated their full powers, found in good and due form, have agreed as follows:

ARTICLE 1. The High Contracting Parties collectively and severally[1] guarantee, in the manner provided in the following articles, the maintenance of the territorial *status quo* resulting from the frontiers between Germany and Belgium and between Germany and France and the inviolability of the said frontiers as fixed by or in pursuance of the treaty of peace signed at Versailles on June 28, 1919, and also the observance of the stipulations of Arts. 42 and 43 of the said treaty concerning the demilitarized zone.[2]

ART. 2. Germany and Belgium, and also Germany and France, mutually undertake that they will in no case attack or invade each other or resort to war against each other.

This stipulation shall not, however, apply in the case of—

1. The exercise of the right of legitimate defense, that is to say, resistance to a violation of the undertaking contained in the previous paragraph or to a flagrant breach of Arts. 42 or 43 of the said treaty of Versailles, if such breach constitutes an unprovoked act of aggression and by reason

[1]The definition of this term was given in the French note of May 22 to Great Britain as follows:

"6.—(*a*) By 'joint and several guaranty' is meant that the guaranty is given by all the signatories who must in principle act together, but that each individual signatory is nevertheless bound to act, even in the case where one or several of the cosignatories default; thus, on the occasion of the violation of Belgian neutrality by Germany in 1914, Austria defaulted, but the other guarantors were bound to act and did not hesitate to honor their signature." (*Op. cit.*, 17.)

[2]The articles referred to read:

"ART. 42. Germany is forbidden to maintain or construct any fortifications either on the left bank of the Rhine or on the right bank to the west of a line drawn 50 kilometers to the east of the Rhine.

"ART. 43. In the area defined above the maintenance and the assembly of armed forces, either permanently or temporarily, and military maneuvers of any kind, as well as the upkeep of all permanent works of mobilization, are in the same way forbidden."

of the assembly of armed forces in the demilitarized zone immediate action is necessary.[1]

2. Action in pursuance of Art. 16 of the Covenant of the League of Nations.[2]

3. Action as the result of a decision taken by the Assembly or by the Council of the League of Nations or in pursuance of Art. 15, par. 7, of the Covenant of the League of Nations, provided that in this last event the action is directed against a state which was the first to attack.[3]

ART. 3. In view of the undertakings entered into in Art. 2 of the present treaty, Germany and Belgium and Germany and France undertake to settle by peaceful means and in the manner laid down herein all

[1]This subparagraph provides an alternative procedure and, *pro tanto*, a modification, as between the parties, of the previous stipulation of the treaty of Versailles, which reads:

"ART. 44. In case Germany violates in any manner whatever the provisions of Arts. 42 and 43, she shall be regarded as committing a hostile act against the powers signatory of the present treaty and as calculated to disturb the peace of the world."

[2]The Members of the League of Nations under this article undertake to sever all trade or financial relations with and to take other similar measures against any Member of the League which resorts to war in disregard of the provisions of Arts. 12, 13 or 15 of the Covenant. By Art. 12 the Members of the League agree that any dispute likely to lead to a rupture shall be submitted to arbitration or judicial settlement or to inquiry. Art. 13 deals with the arbitral method and Art. 15 with the inquiry method.

[3]The situation contemplated in this clause relates to the procedure of inquiry by the Council in the case of a dispute likely to lead to a rupture. If the Council is so seized of the matter, its first effort is to "endeavor to effect a settlement." If the dispute is not thus settled, the Council publishes its recommendations and the pertinent facts. If this report is unanimously agreed to by the disinterested members of the Council, "the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report."

Paragraph 7 reads: "If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice."

It is this provision, when reached under the procedure laid down by Art. 15, that is read into the present treaty. The latter part of subpar. (3) of Art. 2 may therefore be paraphrased as follows:

The stipulations of Par. 1 of Art. 2 shall not apply in case the Council of the League of Nations fails to produce a report unanimous except for representatives of one or more of the parties to the dispute. Under these circumstances, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice, which action is defined by the present treaty as "directed against the state which was the first to attack."

questions of every kind which may arise between them and which it may not be possible to settle by the normal methods of diplomacy:

Any question with regard to which the parties are in conflict as to their respective rights shall be submitted to judicial decision, and the parties undertake to comply with such decison.

All other questions shall be submitted to a conciliation commission. If the proposals of this commission are not accepted by the two parties, the question shall be brought before the Council of the League of Nations, which will deal with it in accordance with Art. 15 of the Covenant of the League.

The detailed arrangements for effecting such peaceful settlement are the subject of special agreements signed this day.[1]

Art. 4. (1) If one of the High Contracting Parties alleges that a violation of Art. 2 of the present treaty or a breach of Arts. 42 or 43 of the treaty of Versailles has been or is being committed, it shall bring the question at once before the Council of the League of Nations.

2. As soon as the Council of the League of Nations is satisfied that such violation or breach has been committed, it will notify its finding without delay to the powers signatory of the present treaty, who severally agree that in such case they will each of them come immediately to the assistance of the power against whom the act complained of is directed.

3. In case of a flagrant violation of Art. 2 of the present treaty or of a flagrant breach of Arts. 42 or 43 of the treaty of Versailles by one of the High Contracting Parties, each of the other Contracting Parties hereby undertakes immediately to come to the help of the party against whom such a violation or breach has been directed as soon as the said power has been able to satisfy itself that this violation constitutes an unprovoked act of aggression and that by reason either of the crossing of the frontier or of the outbreak of hostilities or of the assembly of armed forces in the demilitarized zone immediate action is necessary. Nevertheless, the Council of the League of Nations, which will be seized of the question in accordance with the first paragraph of this article, will issue its findings, and the High Contracting Parties undertake to act in accordance with the recommendations of the Council provided that they are concurred in by all the members other than the representatives of the parties which have engaged in hostilities.

Art. 5. The provisions of Art. 3 of the present treaty are placed under the guaranty of the High Contracting Parties as provided by the following stipulations:

If one of the powers referred to in Art. 3 refuses to submit a dispute to peaceful settlement or to comply with an arbitral or judicial decision

[1]The conventions referred to are Annexes B and C, *infra*.

and commits a violation of Art. 2 of the present treaty or a breach of Arts. 42 or 43 of the treaty of Versailles, the provisions of Art. 4 shall apply.

Where one of the powers referred to in Art. 3, without committing a violation of Art. 2 of the present treaty or a breach of Arts. 42 or 43 of the treaty of Versailles, refuses to submit a dispute to peaceful settlement or to comply with an arbitral or judicial decision, the other party shall bring the matter before the Council of the League of Nations, and the Council shall propose what steps shall be taken; the High Contracting Parties shall comply with these proposals.

ART. 6. The provisions of the present treaty do not affect the rights and obligations of the High Contracting Parties under the treaty of Versailles or under arrangements supplementary thereto, including the agreements signed in London on August 30, 1924.[1]

ART. 7. The present treaty, which is designed to insure the maintenance of peace and is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take whatever action may be deemed wise and effectual to safeguard the peace of the world.

ART. 8. The present treaty shall be registered at the League of Nations in accordance with the Covenant of the League. It shall remain in force until the Council, acting on a request of one or other of the High Contracting Parties notified to the other signatory powers three months in advance, and voting at least by a two-thirds majority, decides that the League of Nations insures sufficient protection to the High Contracting Parties; the treaty shall cease to have effect on the expiration of a period of one year from such decision.

ART. 9. The present treaty shall impose no obligation upon any of the British dominions, or upon India, unless the Government of such dominion, or of India, signifies its acceptance thereof.

ART. 10. The present treaty shall be ratified and the ratifications shall be deposited at Geneva in the archives of the League of Nations as soon as possible.

It shall enter into force as soon as all the ratifications have been deposited and Germany has become a Member of the League of Nations.

The present treaty, done in a single copy, will be deposited in the archives of the League of Nations, and the Secretary-General will be requested to transmit certified copies to each of the High Contracting Parties.

[1]The agreements putting into force the Experts' (Dawes) Plan. For texts see *Reparation*, Part VI, this Series, Vol. VIII, Nos. 5–6, p. 236.

In faith whereof the above-mentioned Plenipotentiaries have signed the present treaty.

Done at Locarno, October 16, 1925.

HANS LUTHER.[1]
GUSTAV STRESEMANN.
EMILE VANDERVELDE.
ARI. BRIAND.
STANLEY BALDWIN.
AUSTEN CHAMBERLAIN.
B. M.[2]
VITTORIO SCIALOJA.

ANNEX B.

ARBITRATION CONVENTION BETWEEN GERMANY AND BELGIUM.

Initialed at Locarno October 16, 1925; signed at London, December 1, 1925; deposited with the Secretariat of the League of Nations, December 14, 1925; ratifications deposited with Secretariat, League of Nations, by Germany, Belgium, September 14, 1926; entered into force, September 14, 1926; registered at the League of Nations, September 14, 1926.

[Translation.]

The undersigned duly authorized,

Charged by their respective Governments to determine the methods by which, as provided in Art. 3 of the treaty concluded this day between Germany, Belgium, France, Great Britain and Italy, a peaceful solution shall be attained of all questions which can not be settled amicably between Germany and Belgium.

Have agreed as follows:

PART I.

ARTICLE 1. All disputes of every kind between Germany and Belgium with regard to which the parties are in conflict as to their respective rights, and which it may not be possible to settle amicably by the normal methods of diplomacy, shall be submitted for decision either to an arbitral tribunal or to the Permanent Court of International Justice, as laid down hereafter. It is agreed that the disputes referred to above in-

[1]The initials were affixed at Locarno. The signatures were affixed at London.

[2]Benito Mussolini initialed at Locarno only.

clude in particular those mentioned in Art. 13 of the Covenant of the League of Nations.[1]

This provision does not apply to disputes arising out of events prior to the present convention and belonging to the past.

Disputes for the settlement of which a special procedure is laid down in other conventions in force between Germany and Belgium shall be settled in conformity with the provisions of those conventions.

Art. 2. Before any resort is made to arbitral procedure or to procedure before the Permanent Court of International Justice, the dispute may, by agreement between the parties, be submitted with a view to amicable settlement to a permanent international commission styled the Permanent Conciliation Commission, constituted in accordance with the present convention.

Art. 3. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of the national courts of such party, the matter in dispute shall not be submitted to the procedure laid down in the present convention until a judgment with final effect has been pronounced, within a reasonable time, by the competent national judicial authority.

Art. 4. The Permanent Conciliation Commission mentioned in Art. 2 shall be composed of five members who shall be appointed as follows, that is to say: the German Government and the Belgian Government shall each nominate a commissioner chosen from among their respective nationals, and shall appoint, by common agreement, the three other commissioners from among the nationals of third powers; these three commissioners must be of different nationalities and the German and Belgian Governments shall appoint the president of the commission from among them.

The commissioners are appointed for three years, and their mandate is renewable. Their appointment shall continue until their replacement, and, in any case, until the termination of the work in hand at the moment of the expiry of their mandate. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Art. 5. The Permanent Conciliation Commission shall be constituted within three months from the entry into force of the present convention.

If the nomination of the commissioners to be appointed by common agreement should not have taken place within the said period, or, in the

[1]The second paragraph of Art. 13 reads:

"Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

case of the filling of a vacancy, within three months from the time when the seat falls vacant, the President of the Swiss Confederation shall, in the absence of other agreement, be requested to make the necessary appointments.

ART. 6. The Permanent Conciliation Commission shall be informed by means of a request addressed to the president by the two parties acting in agreement or, in the absence of such agreement, by one or other of the parties.

The request, after having given a summary account of the subject of the dispute, shall contain the invitation to the commission to take all necessary measures with a view to arrive at an amicable settlement.

If the request emanates from only one of the parties, notification thereof shall be made without delay to the other party.

ART. 7. Within 15 days from the date when the German Government or the Belgian Government shall have brought a dispute before the Permanent Conciliation Commission either party may, for the examination of the particular dispute, replace its commissioner by a person possessing special competence in the matter.

The party making use of this right shall immediately inform the other party; the latter shall in that case be entitled to take similar action within 15 days from the date when the notification reaches it.

ART. 8. The task of the Permanent Conciliation Commission shall be to elucidate questions in dispute, to collect with that object all necessary information by means of inquiry or otherwise, and to endeavor to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down a period within which they are to make their decision.

At the close of its labors the commission shall draw up a report stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement.

The labors of the commission must, unless the parties otherwise agree, be terminated within six months from the day on which the commission shall have been notified of the dispute.

ART. 9. Failing any special provision to the contrary, the Permanent Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to inquiries the commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chap. 3 (International Commissions of Inquiry) of the Hague convention of October 18, 1907,[1] for the pacific settlement of international disputes.

[1]The chapter referred to is reprinted in "Protocol of Arbitration, Security and Disarmament," Part II, this Series, Vol. VII, No. 8, p. 461. Arts. 10–36 of the chapter define procedure.

ART. 10. The Permanent Conciliation Commission shall meet, in the absence of agreement by the parties to the contrary, at a place selected by its president.

ART. 11. The labors of the Permanent Conciliation Commission are not public, except when a decision to that effect has been taken by the commission with the consent of the parties.

ART. 12. The parties shall be represented before the Permanent Conciliation Commission by agents, whose duty it shall be to act as intermediary between them and the commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose, and request that all persons whose evidence appears to them useful should be heard. The commission, on its side, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties, as well as from all persons it may think useful to summon with the consent of their Government.

ART. 13. Unless otherwise provided in the present convention, the decisions of the Permanent Conciliation Commission shall be taken by a majority.

ART. 14. The German and Belgian Governments undertake to facilitate the labors of the Permanent Conciliation Commission, and particularly to supply it, to the greatest possible extent, with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory and in accordance with their law to the summoning and hearing of witnesses or experts, and to visit the localities in question.

ART. 15. During the labors of the Permanent Conciliation Commission each commissioner shall receive salary, the amount of which shall be fixed by agreement between the German and Belgian Governments, each of which shall contribute an equal share.

ART. 16. In the event of no amicable agreement being reached before the Permanent Conciliation Commission the dispute shall be submitted by means of a special agreement either to the Permanent Court of International Justice under the conditions and according to the procedure laid down by its Statute[1] or to an arbitral tribunal under the conditions and according to the procedure laid down by the Hague convention of October 18, 1907,[2] for the pacific settlement of international disputes.

If the parties can not agree on the terms of the special agreement after a month's notice one or other of them may bring the dispute before the Permanent Court of International Justice by means of an application.

[1]See "America and the Permanent Court of International Justice," this Series, Vol. V, No. 5, p. 364.

[2]The procedure is set forth in Arts. 51–85 of the convention, this Series, Vol. VII, No. 8, p. 470.

PART II.

ART. 17. All questions on which the German and Belgian Governments shall differ without being able to reach an amicable solution by means of the normal methods of diplomacy the settlement of which can not be attained by means of a judicial decision as provided in Art. 1 of the present convention, and for the settlement of which no procedure has been laid down by other conventions in force between the parties, shall be submitted to the Permanent Conciliation Commission, whose duty it shall be to propose to the parties an acceptable solution and in any case to present a report.

The procedure laid down in Arts. 6–15 of the present convention shall be applicable.

ART. 18. If the two parties have not reached an agreement within a month from the termination of the labors of the Permanent Conciliation Commisssion the question shall, at the request of either party, be brought before the Council of the League of Nations, which shall deal with it in accordance with Art. 15 of the Covenant of the League.[1]

[1]Art. 15 of the Covenant reads:

"If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or to judicial settlement in accordance with Art. 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

"For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

"The Council shall endeavor to effect a settlement of the dispute and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

"If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

"Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

"If a report by the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

"If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

"If the dispute between the parties is claimed by one of them, and is found by

General Provisions.

ART. 19. In any case, and particularly if the question on which the parties differ arises out of acts already committed or on the point of commission, the Conciliation Commission or, if the latter has not been notified thereof, the arbitral tribunal or the Permanent Court of International Justice, acting in accordance with Art. 41 of its Statute,[1] shall lay down within the shortest possible time the provisional measures to be adopted. It shall similarly be the duty of the Council of the League of Nations, if the question is brought before it, to insure that suitable provisional measures are taken. The German and Belgian Governments undertake respectively to accept such measures, to abstain from all measures likely to have a repercussion prejudicial to the execution of the decision or to the arrangements proposed by the Conciliation Commission or by the Council of the League of Nations, and in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

ART. 20. The present convention continues applicable as between Germany and Belgium, even when other powers are also interested in the dispute.

ART. 21. The present convention shall be ratified. Ratifications shall be deposited at Geneva with the League of Nations at the same time as the ratifications of the treaty concluded this day between Germany, Belgium, France, Great Britain and Italy.

It shall enter into and remain in force under the same conditions as the said treaty.

The present convention, done in a single copy, shall be deposited in

the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

"The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

"In any case referred to the Assembly, all the provisions of this Article and of Art. 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute."

[1]The article reads:

"The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

"Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council."

the archives of the League of Nations, the Secretary-General of which shall be requested to transmit certified copies to each of the two contracting Governments.

Done at Locarno, October 16, 1925.

STR[ESEMANN].
E[MILE] V[ANDERVELDE].

ANNEX C.

ARBITRATION CONVENTION BETWEEN GERMANY AND FRANCE.

Initialed at Locarno, October 16, 1925; signed at London, December 1, 1925; deposited with the Secretariat of the League of Nations, December 14, 1925; ratifications deposited with Secretariat, League of Nations, by Germany, France, September 14, 1926; entered into force, September 14, 1926; registered at the League of Nations, September 14, 1926.

[Translation.]

The undersigned duly authorized,

Charged by their respective Governments to determine the methods by which, as provided in Art. 3 of the treaty concluded this day between Germany, Belgium, France, Great Britain and Italy, a peaceful solution shall be attained of all questions which can not be settled amicably between Germany and France.

Have agreed as follows:

[Arts. 1–21, *mutatis mutandis*, correspond word for word with the text of the arbitration convention between Germany and Belgium, Annex B.]

The present convention, done in a single copy, shall be deposited in the archives of the League of Nations, the Secretary-General of which shall be requested to transmit certified copies to each of the two contracting Governments.

Done at Locarno, October 16, 1925.

STR[ESEMANN].
A. B[RIAND].

ANNEX D.

ARBITRATION TREATY BETWEEN GERMANY AND POLAND.

Initialed at Locarno, October 16, 1925; signed at London, December 1, 1925; deposited with the Secretariat of the League of Nations, December 14, 1925; ratifications deposited with Secretariat, League of Nations, by Germany, Poland, September 14, 1926; entered into force, September 14, 1926; registered at the League of Nations, September 14, 1926.

[Translation.]

The President of the German Empire and the President of the Polish Republic;

Equally resolved to maintain peace between Germany and Poland by assuring the peaceful settlement of differences which might arise between the two countries;

Declaring that respect for the rights established by treaty or resulting from the law of nations is obligatory for international tribunals;

Agreeing to recognize that the rights of a state can not be modified save with its consent;

And considering that sincere observance of the methods of peaceful settlement of international disputes permits of resolving without recourse to force questions which may become the cause of division between states;

Have decided to embody in a treaty their common intentions in this respect, and have named as their plenipotentiaries the following:

Who, having exchanged their full powers, found in good and due form, are agreed upon the following articles:

PART I.

ARTICLE 1. All disputes of every kind between Germany and Poland with regard to which the parties are in conflict as to their respective rights, and which it may not be possible to settle amicably by the normal methods of diplomacy, shall be submitted for decision either to an arbitral tribunal or to the Permanent Court of International Justice, as laid down hereafter. It is agreed that the disputes referred to above include in particular those mentioned in Art. 13 of the Covenant of the League of Nations.[1]

This provision does not apply to disputes arising out of events prior to the present treaty and belonging to the past.

Disputes for the settlement of which a special procedure is laid down in other conventions in force between the High Contracting Parties shall be settled in conformity with the provisions of those conventions.

ART. 2. Before any resort is made to arbitral procedure or to procedure before the Permanent Court of International Justice, the dispute may, by agreement between the parties, be submitted with a view to amicable settlement, to a permanent international commission, styled the Permanent Conciliation Commission, constituted in accordance with the present treaty.

[1]The second paragraph of Art. 13 reads:

"Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement."

Art. 3. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of the national courts of such party, the matter in dispute shall not be submitted to the procedure laid down in the present treaty until a judgment with final effect has been pronounced, within a reasonable time, by the competent national judicial authority.

Art. 4. The Permanent Conciliation Commission mentioned in Art. 2 shall be composed of five members, who shall be appointed as follows, that is to say: The High Contracting Parties shall each nominate a commissioner chosen from among their respective nationals, and shall appoint, by common agreement, the three other commissioners from among the nationals of third powers; those three commissioners must be of different nationalities, and the High Contracting Parties shall appoint the president of the commission from among them.

The commissioners are appointed for three years, and their mandate is renewable. Their appointment shall continue until their replacement, and in any case until the termination of the work in hand at the moment of the expiry of their mandate.

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Art. 5. The Permanent Conciliation Commission shall be constituted within three months from the entry into force of the present convention.

If the nomination of the commissioners to be appointed by common agreement should not have taken place within the said period, or, in the case of the filling of a vacancy, within three months from the time when the seat falls vacant, the President of the Swiss Confederation shall, in the absence of other agreement, be requested to make the necessary appointments.

Art. 6. The Permanent Conciliation Commission shall be informed by means of a request addressed to the president by the two parties acting in agreement, or, in the absence of such agreement, by one or other of the parties.

The request, after having given a summary account of the subject of the dispute, shall contain the invitation to the commission to take all necessary measures with a view to arrive at an amicable settlement. If the request emanates from only one of the parties, notification thereof shall be made without delay to the other party.

Art. 7. Within 15 days from the date when one of the High Contracting Parties shall have brought a dispute before the Permanent Conciliation Commission, either party may, for the examination of the particular dispute, replace its commissioner by a person possessing special competence in the matter.

The party making use of this right shall immediately inform the other party; the latter shall in that case be entitled to take similar action within 15 days from the date when the notification reaches it.

ART. 8. The task of the Permanent Conciliation Commission shall be to elucidate questions in dispute, to collect with that object all necessary information by means of inquiry or otherwise, and to endeavor to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down a period within which they are to make their decision.

At the close of its labors the commission shall draw up a report stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement.

The labors of the commission must, unless the parties otherwise agree, be terminated within six months from the day on which the commission shall have been notified of the dispute.

ART. 9. Failing any special provision to the contrary, the Permanent Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to inquiries, the commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chap. 3 (International Commissions of Inquiry) of the Hague convention of October 18, 1907, for the pacific settlement of international disputes.[1]

ART. 10. The Permanent Conciliation Commission shall meet, in the absence of agreement by the parties to the contrary, at a place selected by its president.

ART. 11. The labors of the Permanent Conciliation Commission are not public except when a decision to that effect has been taken by the commission with the consent of the parties.

ART. 12. The parties shall be represented before the Permanent Conciliation Commission by agents, whose duty it shall be to act as intermediary between them and the commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose, and request that all persons whose evidence appears to them useful should be heard. The commission on its side shall be entitled to request oral explanations from the agents, counsel and experts of the two parties, as well as from all persons it may think useful to summon with the consent of their Government.

ART. 13. Unless otherwise provided in the present treaty the decisions of the Permanent Conciliation Commission shall be taken by a majority.

[1]The chapter referred to is reprinted in "Protocol of Arbitration, Security and Disarmament," Part II, this Series, Vol. VII, No. 8, p. 461. Arts. 10–36 of the chapter define procedure.

Art. 14. The High Contracting Parties undertake to facilitate the labors of the Permanent Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory and in accordance with their law to the summoning and hearing of witnesses or experts, and to visit the localities in question.

Art. 15. During the labors of the Permanent Conciliation Commission each Commissioner shall receive salary, the amount of which shall be fixed by agreement between the High Contracting Parties, each of which shall contribute an equal share.

Art. 16. In the event of no amicable agreement being reached before the Permanent Conciliation Commission, the dispute shall be submitted by means of a special agreement either to the Permanent Court of International Justice under the conditions and according to the procedure laid down by its Statute[1] or to an arbitral tribunal under the conditions and according to the procedure laid down by the Hague convention of October 18, 1907, for the pacific settlement of international disputes.[2]

If the parties can not agree on the terms of the special agreement after a month's notice, one or other of them may bring the dispute before the Permanent Court of International Justice by means of an application.

PART II.

Art. 17. All questions on which the German and Polish Governments shall differ without being able to reach an amicable solution by means of the normal methods of diplomacy the settlement of which can not be attained by means of a judicial decision as provided in Art. 1 of the present treaty, and for the settlement of which no procedure has been laid down by other conventions in force between the parties shall be submitted to the Permanent Conciliation Commission, whose duty it shall be to propose to the parties an acceptable solution and in any case to present a report.

The procedure laid down in Arts. 6–15 of the present treaty shall be applicable.

Art. 18. If the two parties have not reached an agreement within a month from the termination of the labors of the Permanent Conciliation Commission, the question shall, at the request of either party, be brought before the Council of the League of Nations, which shall deal with it in accordance with Art. 15 of the Covenant of the League.

[1]See "America and the Permanent Court of International Justice," this Series, Vol. V, No. 5, p. 364.

[2]The procedure is set forth in Arts. 51–85 of the convention, this Series, Vol. VII, No. 8, p. 470.

General Provisions.

ART. 19. In any case, and particularly if the question on which the parties differ arises out of acts already committed or on the point of commission, the Conciliation Commission or, if the latter has not been notified thereof, the arbitral tribunal or the Permanent Court of International Justice, acting in accordance with Art. 41 of its Statute,[1] shall lay down within the shortest possible time the provisional measures to be adopted. It shall similarly be the duty of the Council of the League of Nations, if the question is brought before it, to insure that suitable provisional measures are taken. The High Contracting Parties undertake respectively to accept such measures, to abstain from all measures likely to have a repercussion prejudicial to the execution of the decision or to the arrangements proposed by the Conciliation Commission or by the Council of the League of Nations, and in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

ART. 20. The present treaty continues applicable as between the High Contracting Parties even when other powers are also interested in the dispute.

ART. 21. The present treaty, which is in conformity with the Covenant of the League of Nations, shall not in any way affect the rights and obligations of the High Contracting Parties as Members of the League of Nations and shall not be interpreted as restricting the duty of the League to take whatever action may be deemed wise and effectual to safeguard the peace of the world.

ART. 22. The present treaty shall be ratified. Ratifications shall be deposited at Geneva with the League of Nations at the same time as the ratifications of the treaty concluded this day between Germany, Belgium, France, Great Britain and Italy.

It shall enter into and remain in force under the same conditions as the said treaty.

The present treaty, done in a single copy, shall be deposited in the archives of the League of Nations, the Secretary-General of which shall be requested to transmit certified copies to each of the High Contracting Parties.

Done at Locarno, October 16, 1925.

STR[ESEMANN].
A. S[KRZYNSKI].

[1]The article reads:

"The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

"Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council."

ANNEX E.

Arbitration Treaty between Germany and Czechoslovakia.

Initialed at Locarno, October 16, 1925; signed at London, December 1, 1925; deposited with the Secretariat of the League of Nations, December 14, 1925; ratifications deposited with Secretariat, League of Nations, by Germany, Czechoslovakia, September 14, 1926; entered into force, September 14, 1926; registered at the League of Nations, September 14, 1926.

[Translation.]

The President of the German Empire and the President of the Czechoslovak Republic;

Equally resolved to maintain peace between Germany and Czechoslovakia by assuring the peaceful settlement of differences which might arise between the two countries;

Declaring that respect for the rights established by treaty or resulting from the law of nations is obligatory for international tribunals;

Agreeing to recognize that the rights of a state can not be modified save with its consent;

And considering that sincere observance of the methods of peaceful settlement of international disputes permits of resolving, without recourse to force, questions which may become the cause of division between states;

Have decided to embody in a treaty their common intentions in this respect, and have named as their plenipotentiaries, the following:

Who, having exchanged their full powers, found in good and due form, are agreed upon the following articles:

[Arts. 1–22, *mutatis mutandis*, correspond word for word with the text of the arbitration convention between Germany and Poland, Annex D.]

The present treaty, done in a single copy, shall be deposited in the archives of the League of Nations, the Secretary-General of which shall be requested to transmit certified copies to each of the High Contracting Parties.

Done at Locarno, October 16, 1925.

Str[esemann]. Dr. B[eneš].

ANNEX F.

Collective Note to Germany Regarding Article 16 of the Covenant of the League of Nations.

Initialed in draft at Locarno, October 16, 1925; handed to the German representative at London, December 1, 1925.

[Translation.]

The German delegation has requested certain explanations in regard to Art. 16 of the Covenant of the League of Nations.

We are not in a position to speak in the name of the League, but in view of the discussions which have already taken place in the Assembly and in the commissions of the League of Nations, and after the explanations which have been exchanged between ourselves, we do not hesitate to inform you of the interpretation which, in so far as we are concerned, we place upon Art. 16.

In accordance with that interpretation the obligations resulting from the said article on the Members of the League must be understood to mean that each state Member of the League is bound to cooperate loyally and effectively in support of the Covenant and in resistance to any act of aggression to an extent which is compatible with its military situation and takes its geographical position into account.[1]

E[MILE] V[ANDERVELDE]. A. B[RIAND]. A[USTEN] C[HAMBERLAIN].
DR. B[EŇEŠ]. A. S[KRZYNSKI].
B. M.[2] V. SCIALOJA.

No. 2.

TREATY BETWEEN FRANCE AND POLAND.

Initialed at Locarno, October 16, 1925; signed at London, December 1, 1925; deposited with the Secretariat of the League of Nations, December 14, 1925; ratifications deposited with Secretariat, League of Nations, by France, Poland, September 14, 1926; entered into force, September 14, 1926; registered at the League of Nations, September 14, 1926.

[Translation.]

The President of the French Republic and the President of the Polish Republic;

Equally desirous to see Europe spared from war by a sincere observance of the undertakings arrived at this day with a view to the maintenance of general peace;

Have resolved to guarantee their benefits to each other reciprocally by a treaty concluded within the framework of the Covenant of the League of Nations and of the treaties existing between them;

And have to this effect nominated for their plenipotentiaries:

Who, after having exchanged their full powers, found in good and due form, have agreed on the following provisions:

ART. 1. In the event of Poland or France suffering from a failure to observe the undertakings arrived at this day between them and Germany with a view to the maintenance of general peace, France, and reciprocally

[1]This paragraph from "cooperate loyally" to the end is a textual repetition of Art. 11, par. 2, of the protocol for the pacific settlement of international disputes opened for signature at Geneva, October 2, 1924.

[2]Benito Mussolini initialed at Locarno, but did not sign at London.

Poland, acting in application of Art. 16 of the Covenant of the League of Nations, undertake to lend each other immediately aid and assistance, if such a failure is accompanied by an unprovoked recourse to arms.

In the event of the Council of the League of Nations, when dealing with a question brought before it in accordance with the said undertakings, being unable to succeed in making its report accepted by all its Members other than the representatives of the parties to the dispute, and in the event of Poland or France being attacked without provocation, France, or reciprocally Poland, acting in application of Art. 15, par. 7, of the Covenant of the League of Nations, will immediately lend aid and assistance.

Art. 2. Nothing in the present treaty shall affect the rights and obligations of the High Contracting Parties as Members of the League of Nations, or shall be interpreted as restricting the duty of the League to take whatever action may be deemed wise and effectual to safeguard the peace of the world.

Art. 3. The present treaty shall be registered with the League of Nations, in accordance with the Covenant.

Art. 4. The present treaty shall be ratified. The ratifications will be deposited at Geneva with the League of Nations at the same time as the ratification of the treaty concluded this day between Germany, Belgium, France, Great Britain and Italy, and the ratification of the treaty concluded at the same time between Germany and Poland.

It will enter into force and remain in force under the same conditions as the said treaties.

The present treaty done in a single copy will be deposited in the archives of the League of Nations, and the Secretary-General of the League will be requested to transmit certified copies to each of the High Contracting Parties.

Done at Locarno, October 16, 1925.

A. B[riand]. Al. S[krzynski].

No. 3.

Treaty between France and Czechoslovakia.

Initialed at Locarno, October 16, 1925; signed at London, December 1, 1925; deposited with the Secretariat of the League of Nations, December 14, 1925; ratifications deposited with Secretariat, League of Nations, by France, Czechoslovakia, September 14, 1926; entered into force, September 14, 1926; registered at the League of Nations, September 14, 1926.

[Translation.]

The President of the French Republic and the President of the Czechoslovak Republic;

Equally desirous to see Europe spared from war by a sincere observance of the undertakings arrived at this day with a view to the maintenance of general peace;

Have resolved to guarantee their benefits to each other reciprocally by a treaty concluded within the framework of the Covenant of the League of Nations and of the treaties existing between them;

And have to this effect, nominated for their plenipotentiaries:

Who, after having exchanged their full powers, found in good and due form, have agreed on the following provisions:

[Arts. 1–4, *mutatis mutandis*, correspond word for word with the text of the preceding treaty between France and Poland, No. 13].

The present treaty done in a single copy will be deposited in the archives of the League of Nations, and the Secretary-General of the League will be requested to transmit certified copies to each of the High Contracting Parties.

Done at Locarno, October 16, 1925.

A. B[RIAND]. DR. E. B[NEŠ].

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By MANLEY O. HUDSON
Bemis Professor of International Law
Harvard Law School

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CONTENTS

PAGE

States Which Have Signed the Protocol of the Permanent Court of International Justice 80

States Which Have Signed the Optional Clause Annexed to the Protocol 81

Chronology of the Permanent Court 82

America's Relation to the Court 83

Judges of the Permanent Court of International Justice 84

Judgments and Opinions of the Permanent Court of International Justice:

First Advisory Opinion (July 31, 1922) 85

Second Advisory Opinion (August 12, 1922) 87

Third Advisory Opinion (August 12, 1922) 88

Fourth Advisory Opinion (February 7, 1923) 89

Fifth Advisory Opinion (July 23, 1923) 93

First Judgment (August 17, 1923) 95

Sixth Advisory Opinion (September 10, 1923) 98

Seventh Advisory Opinion (September 15, 1923) 100

Eighth Advisory Opinion (December 6, 1923) 103

Second Judgment (August 30, 1924) 106

Ninth Advisory Opinion (September 4, 1924) 110

Third Judgment (September 12, 1924) 113

Tenth Advisory Opinion (February 21, 1925) 116

Fourth Judgment (March 26, 1925) 119

Fifth Judgment (March 26, 1925) 121

Eleventh Advisory Opinion (May 16, 1925) 124

Sixth Judgment (August 25, 1925) 126

Twelfth Advisory Opinion (November 21, 1925) 128

STATES WHICH HAVE SIGNED THE PROTOCOL

OF THE

PERMANENT COURT OF INTERNATIONAL JUSTICE[1]

Albania
Australia
Austria
Belgium
Bolivia
Brazil
British Empire
Bulgaria
Canada
Chile
China
Colombia
Costa Rica
Cuba
Czechoslovakia
Denmark
Dominican Republic
Esthonia
Finland
France
Greece
Haiti
Hungary
India
Italy
Japan
Latvia
Liberia
Lithuania
Luxemburg
Netherlands
New Zealand
Norway
Panama
Paraguay
Persia
Poland
Portugal
Rumania
Salvador
Serb-Croat-Slovene State
Siam
South Africa, Union of
Spain
Sweden
Switzerland
Uruguay
Venezuela

Total: 48

[1] As of March 1, 1926.

STATES WHICH HAVE SIGNED THE OPTIONAL CLAUSE PROVIDING FOR COMPULSORY JURISDICTION, ANNEXED TO THE PROTOCOL OF SIGNATURE

Austria
Belgium
Brazil
Bulgaria
China
Costa Rica
Denmark
Dominican Republic
Esthonia
Finland
France
Haiti
Latvia
Liberia
Lithuania
Luxemburg
Netherlands
Norway
Panama
Portugal
Salvador
Sweden
Switzerland
Uruguay

Total: 24

CHRONOLOGY OF THE PERMANENT COURT

February 13, 1920 — The Council of the League of Nations set up a Committee of Jurists to draft the Statute of a Court.

June 16, 1920 — The Committee of Jurists met at The Hague.

December 13, 1920 — Draft Statute as amended approved by the First Assembly of the League of Nations.

December 16, 1920 — Statute annexed to a special treaty, called the Protocol of Signature, opened for signature subject to ratification.

September 16, 1921 — The first election of Judges completed.

January 30, 1922 — The Court met at The Hague for its preliminary session.

March 24, 1922 — Rules of Court promulgated.

May 12, 1922 — The Court opened to all states in the world.

June 15–August 12, 1922 — The Court met at The Hague for its first (ordinary) session, and handed down three advisory opinions.

January 8–February 7, 1923 — Second (extraordinary) session; one advisory opinion.

June 15–September 15, 1923 — Third (ordinary) session; three advisory opinions and one judgment.

September 10, 1923 — Judge Pessoa of Brazil was elected to fill the vacancy caused by Judge Barbosa's death.

November 13–December 6, 1923 — Fourth (extraordinary) session; one advisory opinion.

June 16–September 14, 1924 — Fifth (ordinary) session; one advisory opinion and two judgments.

January 12–March 26, 1925 — Sixth (extraordinary) session; one advisory opinion and two judgments.

April 14–May 16, 1925 — Seventh (extraordinary) session; one advisory opinion.

June 15–August 25, 1925 — Eighth (ordinary) session; one judgment.

October 22–November 21, 1925 — Ninth (extraordinary) session; one advisory opinion.

February 2–, 1926 — Tenth (extraordinary) session, to hear arguments in the case on German interests in Upper Silesia

AMERICA'S RELATION TO THE COURT

February 12, 1920 — Elihu Root was named a member of a Committee of Jurists set up to draft the Statute of the Court.

September 14, 1921 — John Bassett Moore was elected a judge of the Court.

February 17, 1923 — Secretary Hughes addressed a letter to President Harding, recommending that the Senate be asked to advise and consent to the adhesion by the United States to the Protocol of Signature of the Court on four conditions.

February 24, 1923 — President Harding asked the Senate to advise and consent to the adhesion by the United States to the Protocol of Signature of the Court.

Summer of 1923 — The American members of the Permanent Court of Arbitration nominated a candidate for judge to succeed Ruy Barbosa.

December 6, 1923 — President Coolidge, in his annual message to Congress, commended President Harding's proposal of February 24, 1923, to the favorable consideration of the Senate.

June, 1923–June, 1924 — Arbitration treaties of the United States with Great Britain, France, Japan, Portugal, Norway, The Netherlands, and Sweden, were renewed with provision for consideration of possible reference of disputes to the Court after adhesion to the Protocol by the United States.

December 3, 1924 — President Coolidge, in his annual message to Congress, repeated his recommendation that the United States should adhere to the Court Protocol, adding a condition that this country shall not be bound by advisory opinions of the Court "upon questions which we have not voluntarily submitted for its judgment."

March 3, 1925 — The House of Representatives, by vote of 302 to 28, passed a resolution expressing cordial approval of the Court, an earnest desire that the United States adhere to the Court Protocol with the reservations recommended by President Harding and President Coolidge, and readiness to participate in enacting legislation made necessary by adhesion.

March 13, 1925 — The Senate adopted a motion setting December 17, 1925, as the date for consideration of Mr. Swanson's resolution providing for adhesion to the Court Protocol, with the Harding-Hughes-Coolidge reservations.

December 8, 1925 — President Coolidge in his annual message to Congress discusses pending proposal for adhesion and present arguments for favorable action, reiterating earlier attitude on advisory opinions.

December 17, 1925 — Senate began debate on Mr. Swanson's resolution as previously agreed.

January 27, 1926 — Passage by Senate of resolution advising and consenting to adhesion to the Protocol by the United States.

JUDGES OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE [1]

Elected September 14–16, 1921, to serve nine years

Judge	*National of*
Rafael ALTAMIRA y Crevea	Spain
Dionisio ANZILOTTI	Italy
Antonio Sánchez de BUSTAMANTE	Cuba
Robert Bannatyne Viscount FINLAY	Great Britain
Hans Max HUBER, President	Switzerland
Bernard Cornelis Johannes LODER	Netherlands
John Bassett MOORE	United States
Didrik Galtrup Gjedde NYHOLM	Denmark
Yorozu ODA	Japan
Epitacio da Silva PESSOA [2]	Brazil
Charles André WEISS, Vice-President	France

Deputy Judge	
Frederik Valdemar Nikolai BEICHMANN	Norway
Mikhailo JOVANOVICH	Serb-Croat-Slovene State
Demitrie NEGULESCO	Rumania
WANG Ch'ung-hui	China
Registrar — M. Ake Hammarskjöld	(Sweden)

[1] On March 1, 1926.

[2] Elected September 10, 1923, to succeed Ruy Barbosa (d. March 1, 1923).

THE WORK OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE DURING ITS FIRST THREE YEARS[1]

By Manley O. Hudson

BEMIS PROFESSOR OF INTERNATIONAL LAW IN THE HARVARD LAW SCHOOL

First Advisory Opinion of the Permanent Court of International Justice.—Nomination of Delegates to the International Labor Conference[2]

A member of the International Labor Organization is not bound to consult the largest employers' or workers' organization, in selecting its delegates to the International Labor Conference, where other organizations consulted total more members.

On May 12, 1922, the Council of the League of Nations adopted a resolution requesting the Permanent Court of International Justice to give an advisory opinion on the following question: "Was the Workers' Delegate for the Netherlands at the third session of the International Labor Conference nominated in accordance with the provisions of paragraph 3 of Article 389 of the Treaty of Versailles?" The question came before the Court at its first regular session on June 15, 1922. Briefs were presented to the Court on behalf of the Netherlands Government, the International Labor Office, and the Netherlands General Confederation of Trades Unions. Oral arguments were heard on behalf of the British and Netherlands Governments, the International Federation of Trades Unions, the International Federation of Christian Trades Unions, and the International Labor Office.

[1]Reprinted from articles in the American Bar Association Journal for February, March, April, and December, 1924, and May, 1925.

[2]Reported in Publications of the Permanent Court of International Justice, Series B, No. 1, and Series C, No. 1.

The publications of the Permanent Court of International Justice may be obtained from the World Peace Foundation, 40 Mt. Vernon St., Boston, Mass.

At the third session of the International Labor Conference, held at Geneva from October 25 to November 18, 1921, a protest was made against the acceptance by the Conference of the credentials of the workers' delegate named by the Netherlands Government. At previous sessions of the Conference, the workers' delegate named by the Netherlands Government had been nominated in agreement with the Netherlands Confederation of Trades Unions. But the workers' delegate to the third session in 1921 was nominated in agreement with the Confederation of Catholic Trades Unions, the Confederation of Christian Trades Unions, and the Netherlands General Confederation of Trades Unions, though not in agreement with the Netherlands Confederation of Trades Unions. The last-named organization had a membership of 218,596 trade unionists; the other organizations had a total membership of 282,455 trade unionists, though no one had a membership in excess of 155,642.

Article 389 of the Treaty of Versailles requires that non-government delegates to the International Labor Conference be "chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries." On October 22, 1921, the Netherlands Confederation of Trades Unions protested to the International Labor Office that the Netherlands Government had not fulfilled this requirement. The International Labor Conference decided to admit the delegate nominated by the Netherlands Government, in spite of this protest. But at the same time the Conference adopted a resolution calling upon the Governing Body of the International Labor Office to request the Council of the League of Nations to obtain from the Permanent Court of International Justice an opinion as to the proper interpretation of Article 389. The Council of the League of Nations therefore acted at the suggestion of the Governing Body in requesting the opinion.

The Court unanimously concluded that the Netherlands Government's nomination had complied with Article 389 of the Treaty of Versailles. The main ground of the opinion was that in a country where there are several organizations of workers or employers, all of these organizations may be taken into consideration in the nomination of a workers' or employers' delegate, and not

merely that one which has the largest membership, even though the one may be the "most representative."

This opinion was communicated to the Council of the League of Nations and transmitted by the Council to the Director of the International Labor Office. It constitutes a distinct clarification of the Labor Part of the Peace Treaties, and in the future it will greatly assist the governments in nominating non-government delegates to the International Labor Conference.

Second Advisory Opinion of the Permanent Court of International Justice.—Agricultural Labor and the International Labor Organization[1]

The competence of the International Labor Organization extends to the conditions of labor of persons employed in agriculture.

On May 12, 1922, the Council of the League of Nations adopted a resolution requesting the Permanent Court of International Justice to give an advisory opinion on the following question: "Does the competence of the International Labor Organization extend to the international regulation of the conditions of labor of persons employed in agriculture?" The question came before the Court at its first regular session on June 15, 1922. Oral statements were made before the Court on behalf of the British, French, Portuguese and Hungarian Governments, and on behalf of the International Labor Office, the International Agricultural Commission and the International Federation of Trades Unions.

At the first session of the International Labor Conference in Washington, in 1919, it had been decided to place on the agenda of a future session the subject of agricultural labor. At the third session in 1921, three items relating to agricultural labor were included in the agenda. The question of competence was raised before the Conference by the French Government. The International Labor Conference declared itself competent on October 27, 1921, by a vote of 74 to 20. Later the Conference adopted several measures dealing with the protection of agricul-

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 2, and Series C, No. 1.

tural workers. It was the French Government which brought the matter to the Council of the League of Nations in 1922, and this was done without first raising the question in the Governing Body of the International Labor Office.

On August 12, 1922, the Court decided to reply to the Council of the League of Nations that the competence of the International Labor Organization does extend to international regulation of the conditions of persons employed in agriculture. A majority of the judges found the language of the Treaty of Versailles free from any ambiguity on this point. It was said that "every argument used for the exclusion of agriculture might with equal force be used for the exclusion of navigation and fisheries."

Judge Weiss (France) and Deputy-Judge Negulesco (Rumania) declared that they were unable to concur in the opinion given by the Court.

The opinion was duly transmitted to the Council of the League of Nations and by the Council to the French Government.

Third Advisory Opinion of the Permanent Court of International Justice.—Agricultural Production and the International Labor Organization[1]

The competence of the International Labor Organization extends to agricultural production only in so far as conditions of labor are concerned.

On July 18, 1922, the Council of the League of Nations adopted a resolution requesting the Permanent Court of International Justice to give an advisory opinion on the following question: "Does examination of proposals for the organization and development of methods of agricultural production, and of other questions of a like nature, fall within the competence of the International Labor Organization?" The Court was in session at the time this resolution was adopted, and was duly notified of the request. Arguments were heard on behalf of the French Government and the International Labor Office.

The question had been first raised in the Council of the League of Nations by a letter of the French Government of June 13, 1922.

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 3, and Series C, No. 1.

The Director of the International Labor Office stated that the International Labor Organization did not claim to have competence as to agricultural production. Negotiations between the International Labor Office and the International Institute of Agriculture had brought a common view to the two organizations as to the proper delimitation of their respective spheres of action.

On August 12, 1922, the Permanent Court of International Justice expressed the unanimous opinion that while the organization and development of "means of production" had not been included in the sphere of the International Labor Organization, it was not necessary that the Organization "totally exclude from its consideration the effect upon production of measures which it may seek to promote for the benefit of the workers." It was made clear that "the consideration of methods of organizing and developing production from the economic point of view is in itself alien to the sphere of activity marked out for the International Labor Organization by Part XIII of the Treaty of Versailles."

This opinion was duly communicated to the Council of the League of Nations and by the Council to the French Government. With the two preceding opinions, it has assisted the Labor Organization to chart its course, and has thus contributed to the easier co-operation of the nations engaged in considering and adopting uniform labor legislation.

Fourth Advisory Opinion of the Permanent Court of International Justice.—Nature of Dispute About Nationality Decrees[1]

The British-French dispute over nationality decrees in Tunis and Morocco is not by international law solely a matter of domestic jurisdiction within paragraph 8 of Article 15 of the Covenant, though nationality questions in general fall within a state's domestic jurisdiction.

On October 4, 1922, the Council of the League of Nations addressed itself to the following item which had been placed on its agenda at the request of the British Government on August 11,

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 4, and Series C, No. 2, and Additional Volume.

1922: "Dispute between France and Great Britain as to the nationality decrees issued in Tunis and Morocco (French Zone) on November 8, 1921, and their application to British subjects, the French government having refused to submit the legal questions involved to arbitration." The Council took note of "friendly conversations" which had taken place between representatives of the British and French Governments, and pursuant to an agreement between the parties, adopted the following resolution:

(*a*) The Council decides to refer to the Permanent Court of International Justice, for its opinion, the question whether the dispute referred to above is or is not by international law solely a matter of domestic jurisdiction (Article 15, paragraph 8, of the Covenant);

(*b*) And it requests the two Governments to bring this matter before the Permanent Court of International Justice, and to arrange with the Court with regard to the date on which the question can be heard and with regard to the procedure to be followed;

(*c*) Furthermore, the Council takes note that the two Governments have agreed that, if the opinion of the Court upon the above question is that it is not solely a matter of domestic jurisdiction, the whole dispute will be referred to arbitration or to judicial settlement under conditions to be agreed between the Governments.

On October 4, 1922, the Secretary-General of the League of Nations transmitted to the Registrar of the Permanent Court of International Justice a copy of the above resolution "for the information of the Permanent Court of International Justice." This was not treated as a request for an advisory opinion under Article 72 of the Rules of Court, but such a request was sent by the Secretary-General on November 6, 1922. The matter was before the Court as a request for an advisory opinion, although at various stages in the proceedings it was referred to by counsel as if Great Britain and France were parties before the Court in a dispute between them.

The arrangements for calling an extraordinary session of the Court were made by the President with the aid of suggestions from the British and French Governments. The two Governments fixed upon November 25, 1922, as the date for the submission of cases, and December 23, 1922, as the date for the submission of counter-cases. When the Court met in extraordinary session to consider the matter on January 8, the British Government

was represented by Mr. George Mounsey, as Agent, and by the Right Hon. Sir Douglas Hogg, K.C., M.P., His Britannic Majesty's Attorney-General, and the Right Hon. Sir Ernest Pollock, Bart., K.B.E., K.C., M.P., as Counsel. The French Government was represented by M. Mérillon as Agent and Professor de Lapradelle as Agent-Adjoint. Each Government submitted a case and a counter case, and the Court also heard oral arguments from both. The arguments before the Court consumed five days, and during the extraordinary session January 8 to February 7, the Court held twenty meetings.

The dispute had arisen as a consequence of the promulgation by the French Government of decrees converting certain British subjects in Tunis and Morocco (French zone) into French citizens, with the consequence that the French Government began to enforce a liability for military service in the French army. Extended negotiations between the British and French Governments had been conducted before the original communication of the question to the Council of the League of Nations. In these negotiations, Great Britain had relied upon various treaties applying to the French protectorates over Tunis and Morocco, especially the Anglo-French arrangement of September 18, 1897, containing a most-favored-nation clause. But the British insistence had failed to produce any modification in the French decrees, and the French Government had contended throughout that the matter was not open to settlement by diplomatic negotiation.

The argument before the Court was addressed to the single question of the nature of the dispute, and the Court very conscientiously confined itself to the limits of that question. The British Government contended that the existence and abrogation of various treaties were involved, as well as the construction of the terms of such treaties, with the result that the question must be one of an international nature. The French Government contended on the other hand, that "the sovereign right of a nation to legislate upon nationality questions within its own territory governs the situation in Tunis and Morocco under French protectorate as in France itself." It was insisted that the French protectorates in Tunis and Morocco demanded the "progressive assimilation of the customs and laws of the protectorate to those of the protecting country." France refused to admit that

there was any limit on her power in this respect as a result of any applicable international engagement.

On February 7, 1923, the Court handed down a unanimous opinion holding that the dispute "is not, by international law, solely a matter of domestic jurisdiction (Article 15, paragraph 8 of the Covenant)." In the first place, it was held that the language of the Covenant was not to be given "an extensive interpretation." And the following passage from the opinion of the Court seems to indicate a due regard for the influence which its pronouncements are likely to have on future conduct:

> The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.

It was clearly held that a dispute does not achieve an international character merely as a consequence of its being brought before the Council of the League of Nations, nor as a consequence of appeals by a party to the dispute to engagements of an international character. The Court found the Aaland Islands case authority for this proposition. The French protectorates of Tunis and Morocco were examined in great detail, and it was concluded that while a state possesses exclusive jurisdiction in regard to nationality questions in its own territory, it is a question of international law whether such a jurisdiction extends over protected territory as well. The French Government had contended that certain treaties relied upon by Great Britain had lapsed as a result of the principle of *rebus sic stantibus.* This was held by the Court to be a question of international law. The effect of British declarations in the past with regard to Tunis was also found to be involved, and this was clearly a question of international law. Great Britain's reliance on the most-favored-nation clause in the Anglo-French arrangement of September 18, 1897, had also raised a question of international law.

It is notable that the French judge on the Court, Judge Weiss, concurred in the opinion that for these numerous reasons the dispute was not by international law solely a matter of domestic jurisdiction.

When the opinion was announced on February 7, the Agent for the French Government immediately declared that its conclusions were accepted by the French Government and that the French Government desired the case to be submitted on its merits to the Permanent Court of International Justice. This later proposal was not immediately agreed to by the British Government, however. When the Court again met on June 15, 1923, the French and British Governments informed the President of an amicable arrangement concluded between them on May 24, the result of which was to compromise the matter in such a way as to call for no further proceedings before the Court. The French Government had agreed to permit certain British nationals to decline French nationality, on the understanding that the privilege of declination did not extend to succeeding generations. It was stated in the arrangement that neither government would abandon its point of view, nor would the arrangement itself form a precedent for the future. The differences between the Governments, therefore, having lost their practical importance, did not call for further proceedings before the Permanent Court of International Justice.

Fifth Advisory Opinion of the Permanent Court of International Justice—Dispute between Finland and Russia[1]

Where an advisory opinion on the legal effect of treaty provisions would involve a prejudging of a dispute with reference to the execution of such treaty provisions, the Court will not give such an advisory opinion unless both parties submit to the Court's jurisdiction.

On April 21, 1923, the Council of the League of Nations adopted a resolution requesting the Permanent Court of International Justice to give an advisory opinion on the following question: "Do Articles 10 and 11 of the Treaty of Peace between Finland and Russia, signed at Dorpat, on October 14th, 1920, and the annexed Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character which place Russia under an obligation

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 5, and Series C, No. 3, Vols. I and II.

to Finland as to the carrying out of the provisions contained therein?"

The question came before the Court at its third (ordinary) session, begun on June 15, 1923. Notice of the request had been circulated as required by Article 73 of the Rules of Court, and by special decision notice was sent to the Soviet Government of Russia. Various documents were submitted to the Court by the Council and by Finland, and a representative of the Finnish Government was heard in oral argument. The Russian People's Commissary for Foreign Affairs, M. Tchitcherin, sent the Court a long telegram stating that his government found it "impossible to take any part in the proceedings" which it regarded as "without legal value either in substance or in form."

In its opinion announced on July 23, 1923, the Court found that an "acute controversy" existed between Finland and Russia with regard to the Declaration which had been made at Dorpat concerning Eastern Carelia. "The Finnish Government maintain that it forms part of the contract between the two countries and that the Treaty was signed on the terms that the Declaration was as binding as the Treaty itself. The Soviet Government maintain that the Declaration was not by way of contract, but was only declaratory of an existing situation and made merely for information." To attempt to deal with this controversy even to the limited extent of giving an advisory opinion, "would be substantially equivalent to deciding the dispute between the parties."

But the Court found it to be "well established in international law that no State can without its consent be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement." The Court intends to abide by this principle very strictly. "The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court." So in this case the Court regretfully declined to give any opinion. Yet it took account of the long history of the dispute, and added that it did not "regret that the question has been put" by the Council of the League of Nations, for "all must now realize that the Council has spared no pains in exploring every avenue which might possibly lead to some solution."

Four of the judges did not share the conclusions of the majority, however. These conclusions are rather curiously referred to as an "opinion," and are published in the "Collection of Advisory Opinions," though in reality they amount to a refusal to give an opinion. This refusal is a clear indication of the judges' determination that the limitations surrounding judicial action are to be rigidly observed, even in the exercise of their function of giving advisory opinions.

First Judgment of the Permanent Court of International Justice—Case of the S. S. *Wimbledon*, involving freedom of the Kiel Canal [1]

Article 380 of the Treaty of Versailles of June 28, 1919, forbids Germany's applying to the Kiel Canal a neutrality order which would close the canal to a British vessel under French charter carrying munitions to Danzig for transshipment to Poland during a war between Poland and Russia.

On January 16, 1923, the British, French, Italian and Japanese Governments made "application" to the Permanent Court of International Justice asking for judgment whether the German Government "is present or absent," that "the German authorities wrongfully refused on March 21, 1921, free access to the Kiel Canal of the steamship 'Wimbledon,' " and that reparation be awarded for the loss incurred by the *Wimbledon*. The application set forth the provision in the Treaty of Versailles (Art. 380) that "The Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and war of all nations at peace with Germany on terms of entire equality." To vest jurisdiction in the Court, the applicant Powers relied on Article 386 of the Treaty of Versailles, though Germany seems to have been entirely willing to go before the Court and did not at any time contest the jurisdiction. [2]

The Court was seised of the case when it met on June 15, 1923. Under Article 31 of the Court Statute, a German national, Pro-

[1] Reported in Publications of the Permanent Court of International Justice, Series A, No. 1, and Series C, No. 3, Vols. I and II and Additional Volume.

[2] See 18 American Journal of International Law, p. 11.

fessor Walter Schücking of the University of Berlin, had been named by Germany to sit as a judge *ad hoc*. On June 28, Poland's application to "intervene" was approved. The applicant Powers had submitted a *case* on March 17; Germany a *counter-case* on April 20; the applicants a *reply* on May 18; and Germany a *rejoinder* on June 15. Between July 5 and July 10 oral arguments were heard by the agents of each of the six Powers that were parties, the German agent speaking in the German language and the other agents speaking in French or English.

The facts were admitted, though there was some controversy as to whether Poland and Russia were still at war on March 21, 1921, when the *Wimbledon* was excluded from the Kiel Canal. The chief problem related to the construction to be placed on Article 380 of the Treaty of Versailles. In the judgment handed down on August 17, 1923, the Court found "that the terms of Article 380 are categorical and give rise to no doubt." The conclusion followed "that the canal has ceased to be an internal and national navigable waterway, the use of which by vessels of states other than the riparian state is left entirely to the discretion of that state, and that it has become an international waterway intended to provide under treaty guarantee easier access to the Baltic for the benefit of all nations of the world." Hence the Court found Germany under an obligation to keep the Kiel Canal "open, on a footing of equality, to all vessels, without making any distinction between war vessels and vessels of commerce, but on one express condition, namely, that these vessels must belong to nations at peace with Germany."

The Court referred to the "precedents afforded by the Suez and Panama Canals" which in its opinion "invalidate in advance the argument that Germany's neutrality would have necessarily been imperilled if her authorities had allowed the passage of the *Wimbledon*." The Canal has become so "assimilated to natural straits" that even "the passage of a belligerent man-of-war does not compromise the neutrality of the sovereign State under whose jurisdiction the waters in question lie." It was not necessary to say whether the war between Poland and Russia had terminated, for in any case Germany had a duty by treaty to allow the *Wimbledon* to pass. Her refusal was therefore wrongful, and Germany "is responsible for the loss occasioned by this refusal

and must compensate the French Government" acting on behalf of the French firm of charterers. The amount of compensation awarded was 140,749.35 francs, as against 165,749.35 francs claimed.

Three of the judges dissented, including the German national judge. Judges Anzilotti (Italy) and Huber (Switzerland) thought that the "legal status of the Kiel Canal resembles that of the internal navigable waterways of international concern"; that Germany's obligation to maintain the Canal free and open "does not exclude her right to take the measures necessary to protect her interests as a belligerent or neutral power"; and that Germany's neutrality regulation in this case was not "an arbitrary act calculated unnecessarily to impede traffic." Judge Schücking (Germany) thought that a servitude had been imposed on the Kiel Canal, which called therefore for a restrictive interpretation; and in this case the passage of the *Wimbledon* would not have been "compatible with Germany's duties as a neutral toward Russia."

The decision is a notable one for several reasons. It is the first contested case to come before the Permanent Court of International Justice, all the other cases having come by requests for advisory opinions. It is the first case in which a specially chosen national judge has participated. It will constitute for the future a valuable addition to international law as to the Kiel Canal and as to the use of all interoceanic canals in time of war.

The German Government applied to the Reparation Commission on October 5, 1923, for "its consent to the payment of the damages fixed by the Court. On November 10, a reply in the negative was received, which the German Minister at The Hague communicated to the Registrar of the Court on December 6, 1923." [1]

[1] *Annual Report of the Permanent Court of International Justice (January 1st, 1922–June 15th, 1925)*, Series E, No. 1, p. 168.

Sixth Advisory Opinion of the Permanent Court of International Justice—Protection of German Settlers in Poland[1]

Poland's international obligations under the Minorities Treaty of June 28, 1919, involve the protection of German colonists sent into German Poland before the war, requiring Poland to respect contracts and leases made by the German Government with these colonists; and the position taken by Poland after the war was not in conformity with its international obligations.

On February 3, 1923, the Council of the League of Nations adopted a resolution requesting the Permanent Court of International Justice to give an advisory opinion on two questions: (1) whether Poland's refusal to recognize contracts and leases made by certain German colonists with the German Colonization Commission before the end of the war, involved an international obligation within the competence of the League of Nations under the Polish Minorities Treaty of June 28, 1919; and, (2) if so, whether Poland's position with respect to these contracts and leases was in conformity with her international obligations.

The matter came before the Court when it met for its third (ordinary) session on June 15, 1923. Various documents were submitted by the Council of the League of Nations and by the Polish and German Governments. Oral arguments were heard also by the representatives of the Polish Government, Count Rostworowski and Sir Ernest Pollock, formerly Attorney-General of Great Britain, and by the representative of Germany, M. Schiffer, ex-minister of Justice.

The Polish Government had ousted two classes of German colonists: those holding under contracts entitling the colonist to receive title to the land, where the definitive conveyance had not been completed until after the Armistice of November 11, 1918; and those holding under leases for which such contracts had been substituted after the date of the Armistice. On May 17, 1922, the Council of the League of Nations had requested Poland to suspend such measures.

In its opinion announced on September 10, 1923, the Court first considered the competence of the League of Nations to deal

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 6, and Series C, No. 3, Vols. I and III.

with the matter, under the provisions of the Minorities Treaty. In this connection, it held that "the fact that no racial discrimination appears in the text of the law of July 14, 1920, and that in a few instances the law applies to non-German Polish nationals who took as purchasers from original holders of German race, makes no substantial difference. . . . There must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law." It then held that the German Government "is to be considered as having continued to be competent to undertake transactions falling within the normal administration of the country" in the period between November 11, 1918, when the Armistice was signed, and January 10, 1920, when the Treaty of Versailles came into force.

Proceeding then to examine the legal character of the contracts under which the settlers held, the Court found that they were enforceable contracts which gave interests in the land not unlike the interests of a holder of an equitable title in Anglo-American law. "A purchaser acquired a *jus ad rem*, and after *Auflassung* had a *jus in re*." And it was careful to announce that "the fact that there was a political purpose behind the colonisation scheme cannot affect the private rights acquired under the law." Such private rights, whether acquired by contract or by lease, "do not cease on a change of sovereignty," nor is any treaty provision required to preserve them. No provisions in the Treaty of Versailles had prohibited Germany's dealing with such rights in the ordinary normal way, even after the Armistice, and hence Poland was bound to respect such dealing on taking over the governance of the territory. The Court therefore pronounced that "the position adopted by the Polish Government . . . was not in conformity with its international obligations."

When the question later came before the Council of the League of Nations on December 17, 1923, Poland announced that her policy would be re-shaped to accord with the law enunciated by the Court, and agreed to compensate colonists already ousted illegally and suspend further proceedings against other colonists.

By negotiation between the Polish Government and a committee of the Council, the amount of compensation was agreed upon, and on June 17, 1924, the Council took note of the fact that the question was settled.

Seventh Advisory Opinion of the Permanent Court of International Justice—Acquisition of Polish Nationality by German Settlers[1]

Under the Treaty for the Protection of Minorities in Poland, the Council of the League of Nations is competent to deal with questions as to acquisition of Polish nationality by German Settlers, and Article 4 of the Treaty makes habitual residence of parents at the date of birth of settlers concerned, but not at any later date, a condition of acquiring nationality.

On July 7, 1923, the Council of the League of Nations adopted a resolution requesting the Permanent Court of International Justice to give an advisory opinion on the competence of the League of Nations under the Minority Treaty between the Principal Allied and Associated Powers and Poland, and on the proper interpretation to be placed on Article 4 of that Treaty. The Court was in session when the resolution was adopted, and became seised of the questions on receipt of a letter from the Secretary-General of the League, dated July 11, 1923.

Notice of the request was sent to all Members of the League of Nations, to the United States, Ecuador and the Hedjaz as states mentioned in the Annex to the Covenant, and to the German Government. The decision of the Court to send notice to Germany has evoked some adverse criticism on the ground that Germany is not a party in interest with respect to a question arising under the Minority Treaty between the Allied Powers and Poland, even though the question relates to a Germanic group in Poland. But the Court's action would seem to have been a proper exercise of discretion, even though Article 73 of the Rules of Court did not require it. Oral arguments were heard on behalf of Poland and of Germany, but Rumania's request to be heard came too late.

The question was originally raised by a petition of November 12, 1921, of the Germanic League of Bydgoszez submitted to the Council. Article 4 of the Minority Treaty provides that

> Poland admits and declares to be Polish nationals *ipso facto* and without the requirement of any formality persons of German, Austrian, Hun-

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 7, and Series C, No. 3, Vols. I and III.

garian or Russian nationality who were born in the said territory of parents habitually resident there, even if at the date of the coming into force of the present treaty they are not themselves habitually resident there.

The Polish Government had decided to treat certain persons who were former German nationals as not having acquired Polish nationality and as continuing to possess German nationality, because their parents were not habitually resident in the territory, both on the date of birth of the person concerned and on the date when the Minority Treaty came into force on January 10, 1920. When the question was raised in the Council of the League of Nations, Poland contended that it was not within the jurisdiction of the Council, which was limited to questions concerning minorities consisting of Polish nationals. It was necessary for the Court therefore to deal with this basic question of jurisdiction, as well as with the proper interpretation of the nationality provisions of the treaty.

In the unanimous opinion handed down on September 15, 1923, the Court held that the matter was within the competence of the League of Nations. The statesmanship of the Court is evidenced by its general appreciation of the nature of the minorities treaties, and the office which they are designed to serve in the postwar world:

The Minorities Treaties in general, and the Polish Treaty in particular, have been concluded with new States, or with States which, as a result of the war, have had their territories considerably enlarged, and whose population was not therefore clearly defined from the standpoint of political allegiance. One of the first problems which presented itself in connection with the protection of the minorities was that of preventing these States from refusing their nationality, on racial, religious or linguistic grounds, to certain categories of persons, in spite of the link which effectively attached them to the territory allocated to one or other of these States. It is clearly not a purely fortuitous circumstance that the Treaties for the protection of minorities contain provisions relating to the acquisition of nationality. Again, the fact that in some cases these provisions merely repeat, either in their entirety or in part, principles laid down in the Peace Treaties, would appear to be explained by the intention to extend to these principles the guarantee of the League of Nations, no matter what points of difference or resemblance there may be between these treaties.

Lord Finlay concurred in the conclusions of the Court, but he would have gone further in his definition of the minorities protected by the treaty:

> It therefore appears that while such elementary rights as those of life and liberty are secured to all inhabitants, there are a great many rights secured to Polish *ressortissants* only, and it is with regard to such rights that the question of unfair treatment of minorities must arise in the immense majority of cases. Of course, it is conceivable that there might be a case in which protection for life and liberty was refused to some unpopular minority of inhabitants. In that case the minority would be one of a mass of inhabitants, whether Polish nationals or not; but such cases must be rare. The point will arise in the immense majority of cases with regard to such Articles as 7, 8 and 9 and the rights which they confer on all Polish *ressortissants* including German or other minorities.

Having decided the question of competence, the Court proceeded to hold that the Polish Government had improperly required that parents of the persons in question should be living in the territory on January 10, 1920, as well as on the date of birth of their children. It was of the opinion that the clause of the Treaty quoted "leaves little to be desired in the nature of clearness." And it was pointed out that the interpretation contended for by Poland would have the effect of depriving of Polish nationality a person born in Poland of parents habitually resident there at the time, simply because his parents were dead on January 10, 1920.

The advisory opinion was duly transmitted to the Secretary-General of the League of Nations, and on September 22, 1923, the Council "adopted" it. The matter has since been the subject of negotiations between Poland and Germany, and was finally submitted to the arbitration of M. Georges Kaeckenbeeck, chairman of the Arbitral Tribunal of Upper Silesia. On August 30, 1924, Poland and Germany signed a convention accepting the award of the arbitrator. This convention has been ratified, and registered with the Secretariat.[1]

[1]League of Nations, *Treaty Series*, *XXXII*, No. 824.

Eighth Advisory Opinion of the Permanent Court of International Justice—The Jaworzina Boundary Question Between Poland and Czechoslovakia[1]

A decision by the Conference of Ambassadors with reference to the boundary between Poland and Czechoslovakia, accepted by both States, was definitive and the question was not reopened by later negotiations.

On September 27, 1923, the Council of the League of Nations adopted a resolution requesting the Permanent Court of International Justice to give an advisory opinion on the question whether the delimitation of the frontier between Poland and Czechoslovakia in the region known as the Spisz district (Jaworzina) was still open, or whether it should be considered as settled by a definitive decision of the Conference of Ambassadors. The resolution set forth the case of the Polish Government and the case of the Czechoslovak Government, and the Council requested the two governments concerned to be prepared to assist the Court by furnishing it with relevant documents and information. A *dossier* communicated to the Council by the Conference of Ambassadors was transmitted to the Court.

The Court became seised of the matter on receipt of a letter from the Secretary-General of the League of Nations, dated September 29, 1923. In view of the urgency, the Court convened in extraordinary session on November 12, 1923. This session continued from November 12 to December 6, when the opinion was handed down. The Polish Government was represented by M. Mrozowski, President of the Supreme Court of Poland, and the Czechoslovak Government by Professor Kremar and Dr. Krno. Oral arguments on both sides were heard on November 14.

The question of the boundary between Poland and Czechoslovakia had long been before the Conference of Ambassadors at Paris, which on July 27, 1923, decided to lay the difficulties before the Council of the League and to ask the Council to recommend a solution. It was stated that the Governments represented in the Conference of Ambassadors would have no objection should

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 8, and Series C, No. 4.

the Council see fit to ask the opinion of the Court of International Justice on the legal questions involved. It had been decided on September 27, 1919, that a plebiscite should be held in the Spisz district, but so many difficulties developed that the Spa Conference in July, 1920, suspended this arrangement. On July 28, 1920, the Conference of Ambassadors at Paris had decided upon a boundary line between Poland and Czechoslovakia, subject to modifications of detail by a delimitation commission. This decision had been accepted by both Poland and Czechoslovakia. Later negotiations had been undertaken, however, which continued for three years without reaching any different result. So it became necessary to determine whether the decision of the Conference of Ambassadors of July 28, 1920, had a final character.

The opinion of the Court was unanimous that the decision of July 28, 1920, was to be treated as definitive. "The final character of the decision referred to above is also shown, with special clearness, by the declaration appended to the decision, which is signed by the plenipotentiaries of Poland and Czechoslovakia." Not only was "the task entrusted to the Conference of Ambassadors by the Supreme Council fulfilled by the decision of the Conference, but the decision itself was put into execution." It was necessary for the Court to review the entire history of the negotiations which followed the Spa Conference. Throughout this review, the Court showed a disposition to take account of the complexities of the postwar situation and the difficulties in stabilizing it.

"When, as a result of the European War and the dissolution of the Austro-Hungarian Monarchy, Poland and Czechoslovakia were re-established as independent States, their frontiers were, generally speaking, indicated by the same historical and ethnological factors which had led to their reconstitution.

The necessity remained, however, either for a formal pronouncement with regard to the extent of the territories respectively allocated to two States above-mentioned or for a settlement of territorial questions in regions where, owing to special circumstances, the historical or ethnological frontier remained uncertain or met with difficulties which prevented the parties concerned from voluntarily accepting it.

The task of insuring the recognition of the frontiers of the new States and of settling disputes which might arise between them was undertaken by the Principal Allied and Associated Powers represented in the Supreme Council then sitting at Paris."

But the two States were held to have given to the decision of the Conference of Ambassadors "over and above the authority possessed by a decision of the Principal Allied and Associated Powers," the "force of a contractual obligation."

A question also arose as to the effect of later interpretations placed on the decision by the Conference of Ambassadors itself. The Court refused to admit that the Conference was competent to change the clear effect of a decision by a later interpretation.

"The duties of the Conference, as has already been pointed out by the Court, had some points in common with those of an Arbitrator entrusted by two States with the settlement of a frontier dispute between them. But in the absence of an express agreement between the parties, the Arbitrator is not competent to interpret, still less modify his award by revising it. The decision of July 28th, which was accepted by the Polish and Czechoslovak Governments, contains no mention of an agreement of this kind."

Through long and tedious negotiations by different officials, the Court traced the history of the efforts to reach a settlement of the boundary question without its aid. In the end, it was determined that these negotiations did not have the effect of upsetting the original decision of the Conference of Ambassadors on July 28, 1920, which is definitive. It was pointed out, however, that this decision should be applied in its entirety, with authority in the delimination commission to make modifications of detail in marking out the actual boundary.

The advisory opinion was duly transmitted to the Council of the League of Nations which met in Paris in December, 1923. At the Council's request, the Conference of Ambassadors invited the Delimitation Commission to submit fresh proposals in conformity with the Court's opinion. When the report of the Commission came before the Council on March 12, 1924, the Council recommended a definite frontier and suggested that the final decision should be accompanied by protocols to protect the interests of the inhabitants. A protocol was drawn up at Cracow on May 6, 1924, and approved by the Conference of Ambassadors, which decided, on September 5, 1924, that the frontier should be delimited in accordance with the Council resolution of March 12, 1924.

Second Judgment of the Permanent Court of International Justice—The Mavrommatis Palestine Concessions[1]

Under the mandate for Palestine, the Court has jurisdiction of a case brought by Greece against Great Britain notwithstanding the latter's objection.

On May 13, 1924, the Minister of the Greek Republic at The Hague filed with the Registrar of the Permanent Court of International Justice an application instituting a proceeding against the British Government, seeking a declaration that the Government of Palestine and consequently the Government of His Britannic Majesty had wrongfully refused to recognize rights possessed by a Greek subject, Mavrommatis, and praying a judgment for £234,000, with interest, as damages for the injury suffered. The Greek Government relied on Art. 26 of the British Mandate of Palestine, by which the mandatory agreed that any dispute with a member of the League of Nations relating to the interpretation or application of the provisions of the mandate, if it could not be settled by negotiation, should be submitted to the Permanent Court of International Justice. On May 23, the Greek Government filed its case. The Greek Government designated M. Caloyanni to act as national judge, since no Greek national is included among the regular judges of the Court.

On June 3, 1924, the British Government informed the Court of its preliminary objection that the Court had no jurisdiction to entertain the proceedings, and formal objection to that effect was filed on June 16, together with the British Government's preliminary counter-case. On June 30, the Greek agent filed a reply to the British preliminary counter-case concerning the Court's jurisdiction, requesting that the Court dismiss the British objection and reserve the suit for judgment on its merits. On July 15 and 16, oral arguments were addressed to the Court in public session by Professor Politis, counsel for the Greek Government, and by Sir Cecil J. B. Hurst, K.C.B., K.C., agent for the British Government. On August 30, 1924, the Court handed down an opinion upholding the British contention in part, but dismissing it in part, and reserving the latter part of the suit for

[1]Reported in Publications of the Permanent Court of International Justice, Series A, No. 2, and in Series C, No. 5—I.

judgment on the merits. From this opinion, Lord Finlay and Judges Moore, de Bustamante, Oda and Pessoa dissented. So that it is by a vote of seven to five that the Court took jurisdiction of a part of the Greek case and instructed the President to fix the times for deposit of further documents of the written proceedings in accordance with Art. 33 of the Rules of Court.

The alleged Mavrommatis concessions relate to public utilities in Palestine and antedate the present régime in that country. They fall into three groups: the first group, relating to the construction and operation of electric tramways and to the supply of electric light and power and of drinking water in the city of Jerusalem, were definitely concluded with the Turkish authorities on January 27, 1914, and some steps had been taken toward realizing their purpose. The second group, relating to the construction and operation of electric tramways and the supply of electric light and power and of drinking water in the city of Jaffa as well as to the irrigation of the gardens of Jaffa from the waters of El-Hodja, depended on the effect of certain agreements of January 27, 1914, which were alleged to have been converted into concessions on January 28, 1916, though without the confirmation then required by Ottoman law. The third group, relating to the irrigation of the Jordan valley, depended on a verbal agreement of 1911 which was never confirmed by a definitive contract owing to the outbreak of war which prevented the assembling of the Parliament. The claim as to this third group was abandoned by the Greek Government in the case which it presented.

By Art. 36 of its Statute, the Court has jurisdiction to hear and determine "all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." It was agreed in this case that the British Mandate for Palestine, which was conferred on the British Government by the Council of the League of Nations on July 24, 1922, and which came into force on September 29, 1923, falls into the category of such treaties and conventions, and the British Government did not impeach the method by which the proceedings were initiated. The mandate provides (Art. 26):

> The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations

relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Art. 14 of the Covenant of the League of Nations.

Three questions arose, therefore, with regard to the Court's exercise of jurisdiction: (1) Had a dispute arisen between Great Britain as mandatory and another member of the League of Nations? (2) If so, has it proved to be a dispute which "cannot be settled by negotiation?" And (3) does the dispute relate "to the interpretation or the application of the provisions of the mandate?" In addressing itself to these questions, the Court was mindful of the fact "that its jurisdiction is limited, that it is invariably based on the consent of the respondent and only exists in so far as this consent has been given."

The Court answered the first question in the affirmative. While this case was originally a dispute between Mavrommatis and Great Britain, it "entered the domain of international law and became a dispute between two States" when the Greek Government took up the case. "By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings in its own behalf, a State is in reality asserting its own rights."

The Court then proceeds to answer the second question in the affirmative. The Court recognizes "that before a dispute can be made the subject of an action at law, its subject matter should have been clearly defined by means of diplomatic negotiations." Certain correspondence had taken place, which the Court finds to amount to fruitless negotiations. It was thought by some members of the Court that these communications were too few, too brief and too informal to be called negotiations. But in the opinion of the majority "negotiations do not of necessity always presuppose a more or less lengthy series of notes and dispatches." The correspondence between Mavrommatis and the British Government had defined the points at issue, and after that "it would be incompatible with the flexibility which should characterize international relations to require the two Governments to reopen a discussion which has in fact already taken place."

The Court then proceeded to inquire whether the dispute "falls to be decided by application of the clauses of the mandate."

It was unwilling to say that mere reliance by the Greek Government on the terms of the mandate gave the dispute such character. Here the Tunis-Morocco opinion was carefully distinguished. The Court proceeded to a critical examination of Art. 11 of the mandate, on which the Greek Government was relying. The Mavrommatis concessions do not come under Art. 11, but the question arose whether certain other concessions, covering at least a part of the same ground, were violative of rights possessed by Mavrommatis. A connection between the two sets of concessions had been admitted by the British suggestion to Mavrommatis that he come to some understanding with Rutenberg and with the Zionist Organization. The Court found that the Rutenberg concessions fall within the scope of Art. 11 of the mandate. But that article conferred a power on the Palestine Administration only "subject to any international obligations accepted by the mandatory." This called for a consideration of Protocol XII annexed to the treaty of Lausanne, of July 24, 1923. This protocol was brought into force on August 6, 1924, during the period of the Court's deliberations on this case. It prescribes the recognition of all concessions that had been created by the Turkish authorities prior to October 29, 1914. This provision is sufficient to bring the first group of Mavrommatis concessions (the Jerusalem concessions) under Art. 11 of the mandate, so as to confer jurisdiction on the Court, since these concessions were concluded prior to that date. But it does not similarly place the second group of concessions (the Jaffa concessions) within the reach of Art. 11, for they are subsequent to October 29, 1914. Whether the protocol keeps alive the Jaffa concessions is not a question for the Court to determine, for "the Court is not competent to interpret and apply, upon a unilateral application, that protocol as such, for it contains no clause submitting to the Court disputes on this subject."

The Court therefore concluded that the dispute as to the Jerusalem concessions had to be decided on the basis of Art. 11 of the mandate and hence fell into the category of disputes for which Great Britain has accepted the compulsory jurisdiction of the Court; but that the dispute as to the Jaffa concessions had no connection with Art. 11 of the mandate and therefore did not fall into that category.

The Court then proceeded to consider whether this conclusion was in any way modified by the fact that the Protocol XII, annexed to the treaty of Lausanne, came into effect only on August 6, 1924, after the present proceedings had been instituted. Even if a different decision would have been necessary had the protocol not been brought into force, the Court would not now feel justified in dismissing the suit. Its jurisdiction being international, it "is not bound to attach to matters of form the same degree of importance which they might possess in municipal law."

When the judgment of the Court was announced, the British Agent asked that the time-limit for filing the British counter-case be fixed as January 1, 1925. Note was taken of this request, and the case was considered on its merits at an extraordinary session of the Court in February, 1925.

The case is notable for many reasons. The opinions constitute an important contribution to the law governing the Court's jurisdiction, and the large amount of "compulsory" jurisdiction possessed by the Court may be exercised more easily and expeditiously in the future. The ultimate decision of the case on its merits further contributed to the international law applicable to the power of a mandatory within its mandated territory.

Ninth Advisory Opinion of the Permanent Court of International Justice—The Monastery of Saint-Naoum and the Albanian Frontier[1]

By a decision of the Conference of Ambassadors of December 6, 1922, the Principal Allied Powers exhausted the mission contemplated by a Resolution of the Assembly of the League of Nations of October 2, 1921, with respect to the frontier between Albania and the Kingdom of the Serbs, Croats and Slovenes at the Monastery of Saint-Naoum.

Albania was created an independent state by the Powers in 1913. The treaty of London of May 17/30, 1913, reserved to the Great Powers the task of settling her frontiers, and a Conference of Ambassadors sat for this purpose in London in that same year. The task had not been completed, however, when

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 9, and in Series C, No. 5—II.

the war put an end to it. In 1919, the Peace Conference resumed the responsibility. After her admission as a Member of the League of Nations in 1920, Albania sought the assistance of the Council and Assembly of the League, and on October 2, 1921, the latter body by a unanimous vote left the task of further defining her boundaries to the Principal Allied Powers and recommended that Albania accept their decision. A Commission of Inquiry was sent to Albania by the League, and a Delimitation Commission was dispatched there by the Conference of Ambassadors of Paris. Both of these commissions encountered difficulties which had arisen over the Albanian-Jugoslav boundary in the region of the Monastery of Saint-Naoum.

These difficulties came before the Conference of Ambassadors at Paris as the body through which the Principal Allied Powers effect joint action, and both Albania and the Serb-Croat-Slovene State stated their contentions at great length. The Conference of Ambassadors also had before it the opinions of each of the members of the Delimination Commission. It proceeded to a decision on December 6, 1922, allocating the Monastery of Saint-Naoum to Albania. Five months later, the Jugoslav Government sought a revision of this decision and after protracted negotiations the Conference decided, on June 4, 1924, to submit two questions to the Council of the League of Nations: (1) Have the Principal Powers exhausted their mission by the decision of the Conference of December 6, 1922? And (2) If not, what solution should be adopted as to the frontier at this spot?

On June 17, 1924, the Council of the League of Nations decided to request an advisory opinion from the Permanent Court of International Justice on the following question:

> Have the Principal Allied Powers, by the decision of the Conference of Ambassadors of December 6, 1922, exhausted, in regard to the frontier between Albania and the Kingdom of the Serbs, Croats, and Slovenes at the Monastery of Saint-Naoum, the mission, such as it has been recognized by the interested parties, which is contemplated by a unanimous resolution of the Assembly of the League of Nations of October 2, 1921?

Various documents were submitted to the Court with this request, and both the Albanian and Serb-Croat-Slovene Governments submitted briefs. Oral arguments were addressed to the Court on July 23, 1924, by M. Spalaikovitch on behalf of the

Serb-Croat-Slovene Government, by Professor Gilbert Gidel of the University of Paris on behalf of the Albanian Government and by M. Kapsambelis on behalf of the Greek Government. On September 4, 1924, the Court handed down a unanimous opinion to the effect that the Principal Allied Powers have exhausted their mission by the decision of December 6, 1922. This means that the allocation of the monastery of Saint-Naoum to Albania was definitive, and the result has not been upset by the Conference of Ambassadors.

The Court found it clear that the Conference of Ambassadors is the authorized agent of the Principal Allied Powers whose competence in these premises had been recognized by Albania, by Greece, and by the Serb-Croat-Slovene State. Reference is made to the Jaworzina opinion as establishing the "general legal considerations determining the nature and effects" of the decisions of the Conference in matters of this kind. The Conference had stated the various reasons for its allocation of the Monastery to Albania. The Protocol of London of 1913 had specified that the western and southern shore of Lake Ochrida "from the village of Lim to the Monastery of Saint-Naoum" should form part of Albania, leaving it an open question whether the Monastery should be in Albania or not. The Conference of Ambassadors was therefore compelled to decide the question.

The Jugoslav contention that the Monastery had been allocated to Serbia in 1913 was carefully examined by the Court which concluded that "the documents placed before it and the arguments adduced on this point do not suffice to prove that the Conference of Ambassadors was mistaken in holding that the Albanian frontier at Saint-Naoum had not been definitely fixed in 1913." The Court was unable to find that any principle had been established in 1913 to the effect that "all disputed areas on the borders of Albania and Serbia containing Christian orthodox sanctuaries of national or historical importance, which during the Balkan Wars had been redeemed from Mussulman domination should be allocated to Serbia."

The decision of December 6, 1922, was also attacked on the ground that it had been reached on erroneous information and without regard to certain essential facts. The Court found that such was not the case, without committing itself to the possibility

of any action if the facts had turned out to be otherwise. It failed to find, also, that any new facts had been brought to light which were not known to the Conference of Ambassadors at the time of its decision.

The opinion was read at a public session of the Court at the Peace Palace at The Hague on September 4, 1924, and thereafter a copy of the opinion was forwarded to the Council of the League of Nations.

Third Judgment of the Permanent Court of International Justice (Chamber of Summary Procedure)—Interpretation of Reparation Clause in the Peace Treaty of Neuilly[1]

The treaty of Neuilly was held to authorize certain classes of claims against Bulgaria, for damage both as regards property and as regards persons.

The treaty of peace between the Allied Powers and Bulgaria, signed at Neuilly on November 27, 1919, contained a provision subjecting the property of Bulgarian nationals in any Allied country to be charged with the payment of certain claims due to the nationals of that Allied country, especially claims growing out of acts committed by the Bulgarian Government since October 11, 1915, and before that Allied Power entered the war. The amount of such claims was to be assessed by an arbitrator appointed by M. Gustave Ador of Switzerland. The treaty of Neuilly came into force on August 9, 1920,[2] and M. Ador appointed as arbitrator for this purpose M. Albert Wuarin (Switzerland).

The arbitrator then proceeded to draft his rules of procedure, and to submit them to the various Governments for comment. The Bulgarian Government in its observations disputed the competence of the arbitrator to include any claims for acts committed outside Bulgarian territory, or for acts as a result of which claimants had suffered personal injury. The Bulgarian Government, furthermore, denied the power of the arbitrator to determine his own competence. It was the arbitrator who suggested,

[1]Reported in Publications of the Permanent Court of International Justice, Series A, No. 3, and Series C, No. 6.

[2]On September 4, 1920, as concerns Greece.

therefore, that failing direct agreement between the Greek and Bulgarian Governments, the dispute concerning his competence should be submitted to the Permanent Court of International Justice.

On March 18, 1924, the Greek and Bulgarian Governments entered into a special agreement for the arbitration of the dispute (*compromis d'arbitrage*). The effect of this agreement was to submit the dispute to the Permanent Court of International Justice in its Chamber for Summary Procedure, as provided by Art. 29 of the Statute and Arts. 67 and 70 of the Rules of Court. Two questions were formulated with reference to the meaning of the last sentence (in French) of the first subparagraph of paragraph 4 of the annex to Section IV, Part IX of the treaty:[1]

1) Does the text . . . authorize claims for acts committed even outside Bulgarian territory as constituted before October 11, 1915, in particular in districts occupied by Bulgaria after her entry into the war?

2) Does the text . . . authorize claims for damages incurred by claimants not only as regards their property, rights and interests, but also as regards their person, arising out of ill-treatment, deportation, internment or other similar acts?

The Bulgarian and Greek Governments filed their cases with the registry of the Court on July 31, 1924, and their replies on August 25, 1924. No oral proceedings were instituted, but the case was decided on the basis of the cases and replies.

The judgment of the Chamber of Summary Procedure, composed of President Loder, Vice-President Weiss, and Judge Huber, was

[1]This paragraph reads as follows:

All property, rights and interests of Bulgarian nationals within the territory of any Allied or Associated Power and the net proceeds of their sale, liquidation or other dealing therewith may be charged by that Allied or Associated Power in the first place with payment of amounts due in respect of claims by the nationals of that Allied or Associated Power with regard to their property, rights and interests, including companies and associations in which they are interested, in Bulgarian territory, or debts owing to them by Bulgarian nationals, and with payment of claims growing out of acts committed by the Bulgarian Government or by any Bulgarian authorities since October 11, 1915, and before that Allied or Associated Power entered into the war. The amount of such claims may be assessed by an arbitrator appointed by M. Gustave Ador, if he is willing, or if no such appointment is made by him, by an arbitrator appointed by the Mixed Arbitral Tribunal provided for in Section VI. They may be charged in the second place with payment of the amounts due in respect of claims by the nationals of such Allied or Associated Power with regard to their property, rights and interests in the territory of other enemy powers, in so far as those claims are otherwise unsatisfied.

handed down on September 12, 1924. It was found that the purpose of paragraph 4 was to determine the categories of indemnities, debts, and claims with which an Allied or Associated Power might charge the property of Bulgarian nationals within its territory as security, without imposing any fresh obligations over and above those imposed by other clauses of the treaty. It was held that the various classes of claims were not necessarily subject to the same rules of law. The Court then proceeded to a careful interpretation of the language of paragraph 4 when taken in connection with other provisions in the treaty of Neuilly. The Greek case had relied on corresponding provisions in the treaty of Versailles, where it was said that American insistence had secured the inclusion of the expression "acts committed" because of the case of the Lusitania. The Court asserted, however, that "by the general principles of interpretation an obligation imposed on one contracting party cannot be based on the fact that it is mentioned" in another treaty "dealing with a different matter."

Finally it was decided that the treaty of Neuilly "should be interpreted as authorizing claims in respect of acts committed even outside Bulgarian territory as constituted before October 11, 1915, and in respect of damage incurred by claimants not only as regards their property, rights and interests but also as regards their person;" and that reparation due on this ground is "included in the total capital sum" due from Bulgaria.

Tenth Advisory Opinion of the Permanent Court of International Justice—Exchange of Greek and Turkish Populations[1]

To be considered as "established" in Constantinople under the terms of the convention of Lausanne of January 30, 1923, and therefore not included in the exchange of populations between Greece and Turkey, Greek inhabitants must reside within certain boundaries of the Prefecture of the City of Constantinople, and must have arrived prior to October 30, 1918, with an intention to reside there for an extended period.

The peace settlement with Turkey which was made at Lausanne in 1923 was embodied in a number of treaties, conventions and protocols.[2] At the time popular interest was particularly aroused by a convention between Greece and Turkey, signed on January 30, 1923, providing for the compulsory exchange of Turkish nationals of the Greek orthodox religion established in Turkish territory and of Greek nationals of the Moslem religion established in Greek territory. Certain inhabitants of Constantinople and Western Thrace were not included in the exchange. A Mixed Commission was provided for to supervise and facilitate the emigration of persons who were included, to consist of four members representing each of the parties and three members chosen by the Council of the League of Nations. This Mixed Commission was duly constituted, and in the course of its work in 1924, serious difficulties arose.

Prior to October 21, 1924, the Turkish authorities "sent to the hospitals at Baloukli, under police escort, something like 4500 Greeks who, according to the lists prepared by the various areas of the Prefecture of the City [of Constantinople], were shown as arrived after October 30, 1918." This necessitated a construction of the word "established" in the Lausanne Convention. The question was studied by the Mixed Commission and its legal section throughout September, 1924, with a resulting deadlock during which the Mixed Commission could not even meet. On October 22, 1924, the Greek Government appealed

[1]Reported in Publications of the Permanent Court of International Justice, Series B, No. 10.

[2]Great Britain, *Treaty Series* No. 16 (1923), Cmd. 1929.

to the Council of the League of Nations under Art. 11 of the Covenant. On October 31, 1924, at its 31st session, the Council adopted a report inviting the Mixed Commission to hold a plenary meeting and suggesting the possibility of recourse to the Court either by Greece and Turkey directly, or through the Council for an advisory opinion. The Mixed Commission met on November 15, and on November 16 it unanimously decided to request the Council to seek an advisory opinion from the Court. On December 13, 1924, the Council voted to ask the Court to give an advisory opinion on the following question:

> What meaning and scope should be attributed to the word "established" in Art. 2 of the convention of Lausanne of January 30, 1923, regarding the exchange of Greek and Turkish populations, in regard to which discussions have arisen and arguments have been put forward which are contained in the documents communicated by the Mixed Commission? And what conditions must the persons who are described in Art. 2 of the convention of Lausanne under the name of "Greek inhabitants of Constantinople" fulfil in order that they may be considered as "established" under the terms of the Convention and exempt from compulsory exchange?[1]

Notice of the request was sent by the Court to all members of the League of Nations, to the United States and other nonmembers named in the annex to the Covenant, and to Turkey and the Mixed Commission.

Owing to the urgency of the question, an extraordinary session of the Court was convoked, beginning on January 12, 1925. The Greek and Turkish Governments each presented its case, and oral arguments were heard by M. Politis, Greek Minister at Paris, and Dr. Tevfik Rouchdy Bey, President of the Turkish Delegation to the Mixed Commission. The unanimous opinion

[1]Art. 2 of the Lausanne Convention reads as follows:

The following persons shall not be included in the exchange provided for in Art. 1:—

(*a*) The Greek inhabitants of Constantinople.
(*b*) The Moslem inhabitants of Western Thrace.

All Greeks who were already established before October 30, 1918, within the areas under the Prefecture of the City of Constantinople, as defined by the law of 1912, shall be considered as Greek inhabitants of Constantinople.

All Moslems established in the region to the east of the frontier line laid down in 1913 by the treaty of Bucharest shall be considered as Moslem inhabitants of Western Thrace.

of the Court, Judge Moore not sitting, was handed down on February 21, 1925.

The Court first excluded from its consideration the position of the Œcumenical Patriarchate of Constantinople, on the ground that it was not included in the questions put for the advisory opinion; though the Greek representative had presented the view that apart from any question of establishment at Constantinople the prelates of the Orthodox Church were exempt from exchange. The meaning of "established" was to be determined, not in the abstract, but as the word had been used in Art. 2 of the convention. This was held to be a question of international law, and not a question of domestic concern between the administration and the inhabitants. Art. 2 of the convention operated to withdraw persons otherwise covered by Art. 1. The French *établissement* —the French language being controlling—embraces both residence and stability. It has much in common with the conception of domicile in several modern legal systems, but the convention refers rather to a situation of fact than to the legal sense of the term according to any national legislation. There is no indication that the authors of the convention had in mind any national legislation, and the word ought to mean the same as to the Greek population of Constantinople and the Moslem population of Thrace. Hence the Court did not approve the Turkish contention that the convention required the Greeks to be *established* according to the Turkish legislation. This involved no derogation from Turkey's sovereign rights, as the Court had decided in the case of the *Wimbledon*, cited in the opinion. Nor was the Court able to approve the Turkish contention that the municipal courts should be left to decide the question, in view of the convention's provisions conferring that function on the Mixed Commission which is alone competent to say whether any Greek inhabitant is *established*.

In respect of the conditions to be fulfilled by *established* persons, the Court was unwilling to go beyond the actual controversy in interpreting Art. 2 of the convention, not being in possession of sufficient information to enable it to do so. The degree of stability required was not susceptible of exact definition. It would be satisfied by a person who came to Constantinople to make his fortune, though he intended subsequently to return to his place

of origin. It was for the Mixed Commission to deal with complex problems of family unity. The origin of persons concerned was of no consequence. The only date to be considered was clearly October 30, 1918, the date of the original armistice with Turkey.

Hence the Court answered the two questions before it by saying that the purpose of the word *established* in Art. 2 of the Lausanne Convention was to refer to a situation of fact constituted by residence of a lasting nature, and that to be exempt persons must reside within the boundaries of the Prefecture of the City of Constantinople as defined by the law of 1912, having arrived from any other place prior to October 30, 1918, with intention to remain for an extended period.

The advisory opinion was communicated to the Council and considered by that body at its 33rd session in March, 1925. Meanwhile, the question of the Patriarchate had become acute. It was brought before the Council by the Greek Government, and Turkey having denied the Council's jurisdiction, the Council requested another advisory opinion of the Court on the question of its jurisdiction. This matter will be on the docket of the Court when it meets on June 15, 1925, for its annual ordinary session.

Fourth Judgment of the Permanent Court of International Justice (Chamber of Summary Procedure)—Interpretation of Reparation Clause in the Peace Treaty of Neuilly[1]

Interpretation of a previous judgment, under Art. 60 of the Court's Statute, will not be granted when it would go beyond the limits of the judgment itself.

On September 12, 1924, the Court, sitting as a Chamber of Summary Procedure under Art. 29 of its Statute, gave a judgment as requested by Bulgaria and Greece in a special agreement signed at Sofia on March 18, 1924. The dispute related to the jurisdiction of the arbitrator appointed by M. Gustave Ador

[1]Reported in Publications of the Permanent Court of International Justice, Series A, No. 4.

(Switzerland) under paragraph 4 of the Annex to Section IV of Part IX of the treaty of peace of Neuilly between the Allied Powers and Bulgaria. On November 27, 1924, the Greek Government requested an authoritative and detailed interpretation of the judgment. The request was based on Art. 60 of the Statute which provides that while a judgment is final and without appeal, "in the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party."

The Court asked the Greek agent to make precise the points as to which an interpretation was requested, and on December 30, 1924, the latter responded that construction was desired of the second paragraph of the operative part of the judgment, particularly as to (*a*) the existence of Bulgarian property in Greece which might be used to realize sums awarded by the arbitrator; (*b*) the possible liquidation of Bulgarian landed property in Greece; and (*c*) the right of Greece to apply to the Reparation Commission for a redistribution of reparations paid by Bulgaria.

The Bulgarian Government made no protest against the Court's taking jurisdiction of the request, and the Court based its jurisdiction on the parties' agreement rather than on the strict provisions of Art. 60. The Bulgarian agent submitted a memorandum commenting on the Greek agent's bill of particulars. It appeared that the two parties were addressing themselves, not to the interpretation of the sentence in the treaty of Neuilly to which the judgment of September 12 related, but rather to the applicability of the provision in question, and the Bulgarian agent based his position on a wholly different article of the treaty of Neuilly (Art. 177, i) to which the agreement of March 18, 1924, had not related in any way.

The Court conducted no oral proceedings; but on the basis of the documents submitted, the Chamber of Summary Procedure, composed of President Huber, former President Loder, and Vice-President Weiss, was of opinion that each of the Greek requests "envisages a matter other than the determination of the basis and extent of the obligations referred to in the clause in question." Yet the Court's only competence to give an authoritative interpretation of its judgment had to be based on Art. 60 of the Court Statute, and in so acting it had no power to go beyond the limits of the judgment interpreted which in this

case were fixed by the agreement of March 18, 1924. Hence the Court refused to grant the Greek request for an interpretation.

Fifth Judgment of the Permanent Court of International Justice—The Mavrommatis Jerusalem Concessions[1]

The British Government as mandatory had bound itself to respect certain concessions in Palestine, and while a grant of new concessions may not have been in conformity with its obligations no loss resulted and hence no liability for indemnity is imposed.

On August 30, 1924, by its second judgment, the Court dismissed an objection taken by His Britannic Majesty's Government to its jurisdiction to consider the application of the Greek Government in this case, and reserved for judgment on the merits that part of the Greek Government's application which related to the concessions at Jerusalem. These concessions were alleged to have been granted by Turkey in 1914 to a Greek named Mavrommatis, and in the application filed with the Court's Registry on May 13, 1924, the Greek Government asked the Court to declare that the Government of Palestine and consequently also the Government of His Britannic Majesty as mandatory had wrongfully refused to recognize them and that reparation should be made for the loss incurred by Mavrommatis. The Greek case which was filed on May 23, 1924, asked for judgment for £121,045, in respect of the Jerusalem concessions, with interest at six per cent from July 20, 1925. After the Court's judgment that it had jurisdiction, the British counter-case was filed on January 1, 1925, the Greek reply on January 10, and the British rejoinder on January 26. The hearing of the suit was begun on February 10, and continued until February 14. M. Politis, Greek Minister at Paris, and Mr. Purchase appeared for the Greek Government, and Sir Douglas Hogg, Attorney-General, appeared for His Britannic Majesty's Government.

The Court found the facts to be that on January 27, 1914, the City of Jerusalem granted two concessions as to electric power and the supply of drinking water to M. Mavrommatis,

[1] Reported in Publications of the Permanent Court of International Justice, Series A, No. 5.

described as an "Ottoman subject residing at Constantinople," who had the financial support of a Paris banking house. Certain plans were drawn up, and at the beginning of the war the time for executing them was extended by the Jerusalem Municipal Council. After the war, Great Britain became the mandatory for Palestine, and in 1920 a civil administration was set up, though the terms of the mandate were not fixed until July 24, 1922, and it did not come into force until September 29, 1923. On April 16, 1921, M. Mavrommatis offered to the new Government of Palestine to accept the applicable provisions of the Treaty of Sèvres, to draw up new plans and to suggest modifications necessitated by new conditions. Apparently he still had the backing of the Paris banking house, though it was later withdrawn. The negotiations begun related chiefly to the nationality of M. Mavrommatis. It seems to have been suggested to him that he should seek an understanding with M. Rutenberg who was also interested in Palestine concessions and to whom a concession was later granted. The diplomatic situation became very complicated, but negotiations between Mavrommatis and British or Palestine authorities continued, and the former's Greek nationality came to be admitted. The Colonial Office in London seemed willing to deal with him, until a late date, on the basis of the treaty of Sèvres; but finally getting no satisfaction, and contending that the effect of the Rutenberg concessions had been to annul the Mavrommatis concessions, Mavrommatis sought to arbitrate. Meanwhile the Greek Legation in London approached the British Foreign Office. At one time, the Colonial Office seemed to be on the point of agreeing to arbitration before a judge of the English High Court. The situation changed with the signing of the protocol of Lausanne, July 23, 1923, relating to concessions. Mavrommatis acted on a suggestion of the Colonial Office in submitting a claim under it, and further negotiations ensued.

The Court first stated the jurisdiction which it was exercising, confining it to the narrow question whether the Mavrommatis concession fall under Arts. 4 and 5 or Art. 6 of the protocol. This involved a consideration of the validity of the concessions, their relation to the Rutenberg concessions, and the possible damage to Mavrommatis as a result of the mandatory's violating

its international obligations. The British contention that the mistake as to Mavrommatis' nationality had vitiated the concessions granted to him was not upheld, no Turkish law to that effect being shown. Moreover, the Court was of opinion that the mistaken reference to nationality did not prevent the concession from falling within Art. 9 of the protocol of Lausanne. That article is therefore applicable, and Palestine is subrogated to the obligations of Turkey to Mavrommatis.

The Rutenberg concessions were admitted to overlap the Mavrommatis concessions, but Rutenberg had undertaken to respect the latter and had renounced the privilege of demanding expropriation of Mavrommatis concessions. But the Court holds that "so long as M. Rutenberg possessed the right to require the expropriation of the Mavrommatis concessions," the mandatory was violating obligations assumed in the protocol of Lausanne. While in the course of the negotiations, "the possibility of expropriating M. Mavrommatis' concessions or of ceding them to M. Rutenberg was considered," no decision to this effect had been taken. Indeed the British Government had "declared that it will allow M. Mavrommatis full liberty to put into execution his Jerusalem concessions." No loss was proved to have accrued to Mavrommatis as a consequence of the Rutenberg agreement, therefore, and even if the latter be regarded as contrary to the mandatory's obligation, no claim for compensation can be based upon it.

The Court then dealt with the question whether M. Mavrommatis was entitled to have his concessions re-adapted in accordance with economic conditions as changed by recent events. By the provisions of the protocol of Lausanne, this depends on whether they had begun to be put into operation prior to July 23, 1923. The British contention was that work must actually have been begun, but this was not allowed by the Court. The preliminary drafts of the protocol of Lausanne were resorted to in support of the Court's view that it was a more general "application of the contracts" that was intended. M. Mavrommatis, by arranging for deposits and by submitting plans, had begun such application. The Court concluded therefore that the concessions granted to M. Mavrommatis fell within Art. 4 of the protocol of Lausanne, and "that they should be brought into conformity

with the new economic conditions by means of re-adaptation." It was not the province of the Court, however, to say how this re-adaptation should be effected.

The judgment of the Court was, therefore, that: 1) the concessions granted to M. Mavrommatis were valid; 2) the existence for a time of a right on the part of M. Rutenberg to require their annulment was a breach of the mandatory's international obligations; 3) no loss resulted from this breach; 4) the Greek Government's claim for indemnity should therefore be dismissed; and 5) that Art. 4 of the protocol of Lausanne is applicable to require their re-adaptation.

All the judges concurred, except for Judge Altamira's dissent from the third and fourth conclusions.

Eleventh Advisory Opinion of Permanent Court of International Justice[1] — The Polish Postal Service in the Free City of Danzig.

The Polish Government is entitled under treaties in force to maintain a postal service in the Port of Danzig, not restricted to a single office, which may be open to the public use.

On March 13, 1925, the Council of the League of Nations requested the Permanent Court of International Justice to give an advisory opinion on the following questions:

(1) Is there in force a decision of General Haking which decides . . . the points at issue regarding the Polish postal service, and, if so, does such decision prevent reconsideration by the High Commissioner or the Council of all or any of the points in question?

(2) If the questions set out at (*a*) and (*b*) below have not been decided by General Haking,

(*a*) Is the Polish postal service at the Port of Danzig restricted to operations which can be performed entirely within its premises in the Heveliusplatz, or is it entitled to set up letterboxes and collect and deliver postal matter outside those premises?

(*b*) Is the use of the said service confined to Polish authorities and officials, or can it be used by the public?

The occasion for the request was a dispute between Poland and Danzig which had been submitted to the Council, on appeal from

[1] Reported in Publications of the Permanent Court of International Justice, Series B, No. 11.

a decision of the High Commissioner of Danzig. The treaty of Versailles (Art. 104) envisaged the negotiation of a treaty insuring to Poland the control and administration of postal communication between Poland and the Port of Danzig, and such a treaty, called a convention, was signed at Paris on November 9, 1920.[1] This convention was followed by the Warsaw Agreement of October 24, 1921, which made provision for a Polish postal service in Danzig, extending "to all classes and branches of the traffic service and of the technical and administrative services and the installations necessary for such services." Certain premises in the Heveliusplatz in Danzig were acquired by Poland on March 9, 1922, and thereafter certain difficulties arose as to the extent of the Polish service. Negotiations did not result in any agreement, and on January 5, 1925, after previous notice, Poland proceeded to set up letterboxes bearing Polish inscriptions in various streets of Danzig. On January 7, 1925, at night, these letterboxes seem to have been repainted in the old German colors by persons unknown, and an unfortunate incident was created.

The difference was submitted to the High Commissioner, M. S. MacDonnell, whose opinion rendered on February 2, 1925, held that the question had been decided by a previous High Commissioner, General Haking, on May 25, 1922, and that Poland was not entitled to have any postal installations or service outside the Heveliusplatz, where its use was limited to Polish authorities and overseas mails. From this decision, Poland appealed to the Council of the League of Nations under provisions of treaties in force.

The urgency of the questions submitted led the President of the Court to summon an extraordinary session for April 14, 1925. Notice was sent to every Member of the League of Nations, to the United States and other countries on the Court's list, and to Danzig. Both Poland and Danzig submitted various documents, but did not request an oral hearing. The opinion was handed down on May 16, 1925. The Court treated the first question as one of *res judicata*. It could not find that the precise questions at issue had ever been submitted to General Haking, and it was inclined to disregard his dicta in opinions dealing with wholly different matters. Nor would it admit his power, once a decision

[1] League of Nations *Treaty Series*, VI, p. 189.

had been given by him, to effect a later interpretation so as to vary its consequences; for the High Commissioner was exercising a judicial function in deciding disputes in the first instance, and therefore he was acting subject to the usual judicial limitations.

The Court then proceeded to a careful examination of all relevant treaty texts, to answer the second question. These texts had employed the expression "Port of Danzig," a geographical conception, and it was not a part of the Court's function to say what was meant by the port. But within the area of the port, Poland had been given postal privileges in a very broad way, and neither were its operations confined to the Heveliusplatz, nor was its service confined to Polish officials.

After the opinion was read in open court at The Hague, it was forwarded to the Council of the League of Nations, and the latter "adopted" it on June 11, 1925. It then remained to trace the boundaries of the "Port of Danzig," for which the Council set up a special committee. The report of this committee was adopted by the Council on September 19, 1925.

Sixth Judgment of the Permanent Court of International Justice [1] — German Interests in Polish Upper Silesia.

Under the German-Polish convention, the Court has jurisdiction to determine the legality of certain expropriations made by Poland in spite of the latter's objections.

On May 15, 1925, the German Government instituted this proceeding against Poland, acting under Art. 23 of the German-Polish convention,[2] signed at Geneva, May 15, 1922, relating to Upper Silesia. The application stated that the Polish Government had expropriated certain industrial properties at Chorzow in violation of Art. 8 of the Geneva convention; and had notified its intention to expropriate certain large agricultural properties in different regions in violation of various articles of the Geneva

[1] Publications of the Permanent Court of International Justice, Series A, No. 6.

[2] The convention is included in League of Nations *Treaty Series*, IX, p. 465.

Article 23 reads: "1. Should differences of opinion respecting the construction and application of Articles 6 to 22 arise between the German and Polish Governments, they shall be submitted to the Permanent Court of International Justice.

"2. The jurisdiction of the Germano-Polish Mixed Arbitral Tribunal derived from stipulations of the treaty of peace of Versailles shall not thereby be prejudiced."

convention. It prayed judgment that such violations had occurred, and the Court was asked to state what attitude the Polish Government should have adopted in accordance with the Convention. On June 12 and 18, 1925, the Polish Government made "certain preliminary objections of procedure," and maintained that the Court had no jurisdiction. The Polish Case was filed on June 26, asking that the Court declare that it had no jurisdiction or in the alternative that the German application could not be entertained. The German counter-case was filed on July 10.

As none of the Judges of the Court possessed German or Polish nationality, M. Rabel was chosen by Germany to sit as national Judge, and Count Rostworowski was chosen by Poland to sit in that capacity. Oral arguments were made on July 18 and July 20, by MM. Mrozowski and Limburg on behalf of Poland, and by Professor Kaufmann on behalf of Germany. The Court's judgment sustaining the jurisdiction was handed down on August 25, 1925.

The parties both agreed that Art. 23 of the Geneva convention was a "matter specially provided for in a treaty or convention in force," within the meaning of Art. 36 of the Court Statute; and Poland did not contest the form of Germany's application. As to the factory at Chorzow, Poland contended that no difference of opinion was established within the meaning of Art. 23 of the Geneva convention; that Art. 23 was not applicable to any difference that might be found to exist; and that Germany was in effect seeking an advisory opinion which the Court could not give at the request of a single nation. All of these contentions were disapproved by the Court, with the result that as to the claims relating to the factory at Chorzow, its jurisdiction was established. Nor was the Court willing to say that the exercise of its jurisdiction should await the decision of pending cases by the Mixed Arbitral Tribunal. If this contention was to be treated as a plea of *litispendence*, it would fail because the courts were not coordinate and the litigations not identical. Similarly, the Court denied its lack of jurisdiction with reference to the claim relating to the agricultural estates, and it found no reason why the jurisdiction should not be exercised.

Hence, the Polish plea was dismissed, the German application was declared to be admissible, and the case was reserved for

judgment on the merits. Only Count Rostworowski dissented, though Judge Anzilotti filed certain additional observations. On August 25, 1925, the German Government filed a second application, amending its first application so as to include claims against the expropriation of agricultural estates not covered by the first application.

Twelfth Advisory Opinion of the Permanent Court of International Justice[1]—Nature of Council's Action With Respect to the Frontier Between Turkey and Iraq.

The reference of a dispute as contained in Art. 3 of the treaty of Lausanne empowers the Council to give a binding decision for which the votes of all members of the Council except the parties to the dispute are required.

On September 19, 1925, the Council of the League of Nations requested the Permanent Court of International Justice to give an advisory opinion on the following questions:

(1) "What is the character of the decision to be taken by the Council in virtue of Art. 3, Paragraph 2 of the treaty of Lausanne? Is it, for example, an arbitral award, a recommendation, or a simple mediation?"

(2) "Must the decision be unanimous, or may it be taken by a majority? May the representatives of the interested parties take part in the vote?"

The occasion for this request was a dispute between Great Britain and Turkey, which had been submitted to the Council by the British Government on August 6, 1924. The treaty of peace signed by the Allied Powers and Turkey at Lausanne, on July 24, 1923, had fixed the new boundaries of Turkey, and had provided that her boundary with Iraq (Mesopotamia), which was under British Mandate, should be arranged by friendly arrangement between Turkey and Great Britain within nine months; and failing such agreement it was provided that the dispute shall be referred to the Council of the League of Nations. It was also stipulated at Lausanne, in a protocol signed on the same date as the treaty of peace, that the period of nine months should begin

[1] Reported in Publications of the Court, Series B, No. 12.

to run on the opening of negotiations which were to follow an evacuation. Such negotiations were begun on October 5, 1923, and the period expired on July 5, 1924, without any boundary being arranged.

Before the Council of the League of Nations, in September, 1924, the question was first raised as to the office of the Council in the premises. The British Government agreed in advance to accept the Council's decision. The Turkish Government would only recognize the powers of the Council under Art. 15 of the Covenant — though it is to be noted that Turkey is not a Member of the League of Nations. But later negotiations led the Council to believe that both parties were agreed on accepting the Council's decision. The Council therefore proceeded to send a commission of investigation to Iraq, and after its report on July 16, 1925, the discussion in the Council was resumed. It then appeared that the juridical difference as to the Council's function had subsided, and the Council voted to make its request for the advisory opinion.

On receipt of the request, the President of the Court convoked a special session for October 22, 1925. The British Government was then represented before the Court by Sir Douglas Hogg, Attorney General, and Sir Cecil Hurst, legal adviser to the Secretary of State for Foreign Affairs, and Alexander Fachiri. The Turkish Government was not represented by counsel, but it submitted certain documents and replied to certain questions addressed to it by the Court, in spite of a telegram sent to the Court by the Turkish Minister of Foreign Affairs saying that the questions before the Court were political in character, and hence not susceptible of a legal solution.

The Court traced the history of the negotiations which led up to the signature of the treaty of Lausanne, as well as of the attempts made afterward to fix the meaning of its provisions. Guided by the intention of the parties as indicated in the treaty itself, it was found that a final determination of the frontier by the Council had been envisaged, and that in agreeing on the intervention of the Council as a third party the parties had sought a definitive solution of the boundary by the Council. This interpretation was supported both by the provision for an interim maintenance of the *status quo*, and by other articles in the treaty of Lausanne. This conclusion was thought to be so clear that re-

course was unnecessary to the preparatory work preceding the final redaction of the article, but the Turkish had placed reliance on a statement made by Lord Curzon that the Court addressed itself to such preliminaries. Lord Curzon's statement had been made before any draft of Art. 3 existed, and the Court was unable to find that it in any way modified the clear language of that article. Nor could anything be found in the facts subsequent to the signing of the treaty to vary the interpretation which the language necessitated. The Turkish Government's contention in its telegram that the fact of the Council's request for an opinion indicated that the language was not clear and should therefore be held to have imposed a minimum of obligation, was not approved. The Court was unwilling to categorize the final decision by the Council as an arbitral award, nor as a "recommendation" within the meaning of that term as used in Art. 15 of the Covenant; it preferred to treat the present case by itself, and to call the action to be taken simply a decision.

To reply to the second question put to it, the Court analyzed the nature of the Council as a body composed of "persons delegated by their respective governments, from whom they receive instructions and whose responsibility they engage." In such a body "observance of the rule of unanimity is naturally and even necessarily indicated." The general rule that arbitral tribunals decide by a majority was held to be inapplicable. But unanimity in such a case as the present one, in accordance with the principle laid down in Art. 15 of the Covenant, does not involve the concurrence of the representatives of the parties to the dispute. Hence while such representatives may vote, their votes are not essential to the unanimity required.

This opinion of the Court, which was unanimous, was duly communicated to the Council after it had been read in open court at The Hague, and was adopted by the Council on December 8, 1925. The Council then proceeded to take a definite decision as to the Turkish-Iraq boundary.

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of the

LEAGUE OF NATIONS

RECORD OF 1925

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The corporation is constituted for the purpose of educating the people of all nations to a full knowledge of the waste and destructiveness of war, its evil effects on present social conditions and on the well-being of future generations, and to promote international justice and the brotherhood of man; and, generally, by every practical means to promote peace and good will among all mankind. — *By-laws of the Corporation.*

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PREFACE

The present *Yearbook* supplements in the *World Peace Foundation Pamphlets* series that of 1925, which was a summary of the work of the League of Nations from its beginning. Special attention is there given to the origin of the multifarious organs which Member states have constituted at Geneva for the conduct of work of common interest. A cumulative publication necessarily affords only a general review of the subject matter.

It was decided to let the publication for 1925 stand for a period of time and to supplement it with a yearbook in the stricter sense of the word, covering the activities of a single year. It was believed at the outset that this would be a small publication. However, when the preparation was completed it was realized that the development of the work of the League of Nations and the increase in the number of large questions requiring treatment and of technical problems requiring both explanation and notes defeated that expectation.

The present *Yearbook* covers the work of the League of Nations for the calendar year 1925. To the previous edition reference is constantly made for the historical precedents of the problem considered.

The year 1925 may be said to mark the full operation of the machinery which states have set up under the name of the League of Nations. While much was accomplished in previous years, a very large proportion of that accomplishment consisted in setting up and adjusting the machinery of international cooperation. A large amount of the work of previous years also consisted of exploration, of finding tasks to be undertaken.

The primary period resulted in a large amount of agreement upon questions of importance, which were in essence ripe or overripe for international agreement. This had not occurred previously largely because of the lack of permanent machinery for reaching international understandings. With these agreements made, the opportunity to approach difficult questions lay at hand. The importance of an international understanding on double taxation and fiscal evasion is obvious. The practical progress of solving the problem is typical of the type of work now being undertaken by the League.

D. P. M.

May 1, 1926.

CONTENTS

PAGE

What the League of Nations Is 137

Part I. Organization 142

I. Members of the League 142
The German application 143
Memorandum by the German Government 149
Delegates to the League of Nations 155

II. Nonmembers of the League 157

III. Organs 159
1. The Sixth Assembly 159
2. The Council 162
Members in interest 163
Competence in disputes 163
3. The Secretariat 166
General organization 166
Special organizations 167
Internal services 167
4. Finances of the League 168
Scale of allocation of the expenses of the League 170
Assembly Hall 171

IV. Development of International Agreement 173
Protocol for Pacific Settlement 173
Locarno Conference 183
Committee on Progressive Codification of International Law . 186

Part II. Work of the League of Nations 190

I. Direct Relations of States 190
1. Pacific settlement of disputes 190
Expulsion of the Œcumenical Patriarch 190
Frontier between Iraq and Turkey 191
The Bulgaro-Greek incident 201
Upper Silesian social insurance funds 217
Distribution of the Ottoman Public Debt 219
2. Financial Reconstruction 220
Austria 220
Hungary 228
Greek refugee settlement 230

II. Duties Under the Covenant 232
1. Reduction of Armament 232
Conference for the Control of the International Trade in Arms, Munitions and Implements of War 232
Coordination Commission 238
Preparatory Commission for the Disarmament Conference 239
Private manufacture of arms 243
Exercise of the right of investigation 244
2. Mandates 246
Application of international conventions 247
Annual reports 248
Slavery Commission 253

III. Cooperation of States Under the Covenant 258
1. Health Organization 258
Epidemiological Service 258
Interchange of public health personnel 259
Subjects studied:
Sleeping sickness 262
Mortality statistics 263

PAGE
Malaria 263
Proposals for further work 264
2. Economic and Financial Organization 266
Economic Committee 266
Unfair competition 267
Economic crises and unemployment 269
Import and export prohibitions and restrictions 271
False customs declarations 272
Treatment of foreign nationals 272
Preparatory committee on statistics 273
General Economic Conference 274
Financial Committee 277
Double taxation and tax evasion 277
Esthonian economic reform 281
Danzig municipal loan 283
3. Organization for Communications and Transit 285
Danube and Rhine navigation 285
Danube jurisdiction 288
Tonnage measurement in inland navigation 289
Passport conference 290
Reform of the calendar 291
Motor vehicles 291
Telegraphic questions 293
Buoyage and lighting of coasts 294
4. Committee on Intellectual Cooperation 295
International Institute 296
Subcommittee on Arts and Letters 297
International University Information Office 298
Instruction of youth 299
5. Advisory Committee on Traffic in Women and Protection of Children 302
6. Opium 306
Advisory Committee 306
Persian export 308
Annual reports from Governments 309
Certificate system 309
Narcotic offenses treaty 310
Limitation of production 310
Inquiry Commission 311
7. Mitigation of Suffering 312
International Relief Union 312
Refugees 313
Armenian refugee loan 314

Part III. Duties Under Treaties 316

I. Protection of Minorities 316
German-Polish convention 317
Bulgaro-Greek minorities 317
Greek minority in Constantinople and Turkish minority in Western Thrace 319
Hungarian farmers in Rumania 320
Polish minority in Lithuania 324
Jewish minority in Hungary 325

II. Administrative Functions 327
1. Territory of the Saar Basin 327
2. Free City of Danzig 329

WHAT THE LEAGUE OF NATIONS IS

The League of Nations is a series of engagements freely taken by 55 sovereign, or self-governing nations, each for itself and toward the others, "in order to promote international cooperation and to achieve international peace and security," to the following effect:

1. Each Member on admission "shall give effective guaranties of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments" (Art. 1, par. 2).

2. Each Member recognizes "that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations" (Art. 8, par. 1).

3. Each agrees "that the manufacture by private enterprise of munitions and implements of war is open to grave objections" (Art. 8, par. 5).

4. Each undertakes "to interchange full and frank information as to [*a*] the scale of their armaments, [*b*] their military, naval and air programs, and [*c*] the condition of such of their industries as are adaptable to warlike purposes" (Art. 8, par. 6).

5. Each undertakes "to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League" (Art. 10, par. 1).

6. They declare "a matter of concern to the whole League" "any war or threat of war", and that they "shall take any action that may be deemed wise and effectual to safeguard the peace of nations" (Art. 11, par. 1).

7. They declare it "to be the friendly right" of each . . . "to bring to the attention" of the bodies they set up "any circumstance whatever . . . which threatens to disturb international peace or the good understanding between nations upon which peace depends" (Art. 11, par. 2).

8. They "agree that . . . they will submit . . . any dispute likely to lead to a rupture . . . either to arbitration or judicial settlement or to inquiry" (Art. 12, par. 1).

9. "They agree in no case to resort to war until three months after" the result of such submission is known (Art. 12, par. 1).

10. They "agree that . . . they will submit the whole subject matter to arbitration or judicial settlement" in the case of any dispute which "they recognize to be suitable" for such procedure (Art. 13, par. 1).

11. They "agree that they will carry out in full good faith any award or decision that may be rendered" (Art. 13, par. 4).

12. They agree that they "will not resort to war against a Member of the League which complies" with such award or decision (Art. 13, par. 4).

13. They "agree that they will submit" to the Council for conciliation "any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement" (Art. 15, par. 1).

14. They "agree that they will not go to war with any party to the dispute which complies with the recommendations of the report" of the Council, if this is unanimously agreed to by the Council, exclusive of the disputant states (Art. 15, par. 6).

15. They "reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice," if the Council, exclusive of the disputant states, fails to attain unanimity (Art. 15, par. 7).

16. Should any Member disregard agreements Nos. 8 to 14 and resort to war, "it shall *ipso facto* be deemed to have committed an act of war against all other members." They undertake "immediately to subject it to the severance of all trade or financial relations," as well as to insure "the prevention of all financial, commercial or personal intercourse" with it (Art. 16, par. 1).

17. They "agree that they will mutually support one another" in these respects (Art. 16, par. 3).

18. They obligate themselves to register for immediate publication "every treaty or international engagement" with the Secretariat. No such document "shall be binding until so registered" (Art. 18).

19. They grant to the Assembly the faculty of advising them to reconsider "treaties which have become inapplicable" (Art. 19).

20. They grant to the Assembly the faculty of considering "international conditions whose continuance might endanger the peace of the world" (Art. 19).

21. They agree that the "Covenant is accepted as abrogating all" inconsistent obligations. They accept as a duty the procuring "of release from such obligations" (Art. 20).

22. They "solemnly undertake" not to "enter into any engagements inconsistent" with the terms of the Covenant (Art. 20).

23. They establish "the principle that the well-being and development" of "peoples not yet able to stand by themselves under the strenuous conditions of the modern world" are "a sacred trust of civilization." The "tutelage of such peoples" is "intrusted to advanced nations" and "exercised by them as mandatories on behalf of the League" (Art. 22, pars. 1 and 2).

24. They will "endeavor[1] to secure and maintain fair and humane conditions of labor for men, women and children," and "will establish and maintain the necessary international organizations" (Art. 23*a*).

25. They "undertake[1] to secure just treatment of the native inhabitants of territories under their control" (Art. 23*b*).

26. They "intrust[1] the League with the general supervision over the execution of agreements with regard to the traffic in women and children" (Art. 23*c*).

27. They "intrust[1] the League with the general supervision of the execution of agreements with regard to . . . the traffic in opium and other dangerous drugs" (Art. 23*c*).

28. They "intrust[1] the League with the general supervision of the trade in arms and ammunition" (Art. 23*d*).

29. They "make provision[1] to secure and maintain freedom of communications and transit . . . for the commerce of all" (Art. 23*e*).

30. They "make provision[1] to secure and maintain . . . equitable treatment for the commerce of all" (Art. 23*e*).

31. They "endeavor[1] to take steps in matters of international concern for the prevention and control of disease" (Art. 23*f*).

32. They place "under the direction of the League all international bureaus already established by general treaties," if the parties consent (Art. 24, par. 1).

[1] "Subject to and in accordance with the provisions of international conventions, existing or hereafter to be agreed upon."

33. They stipulate that all international bureaus and commissions for the regulation of matters of international interests constituted after January 10, 1920, shall be placed under the direction of the League (Art. 24, par. 1).

34. They "agree to encourage and promote the establishment and cooperation of" authorized voluntary national Red Cross organizations to improve health, prevent disease and mitigate suffering (Art. 25).

States Members of the League have felt free to agree between themselves to leave matters appropriate for consideration to its organs. Among these may be mentioned the minorities régime, the financial reconstruction of Austria and Hungary, the Greek settlement, the Saar Basin, Danzig.

The contracting parties provide that the conduct of their common business as thus defined shall be by an Assembly, consisting of delegates of all Member states, and by a Council consisting of delegates of Member states representative of and acting on behalf of the entire membership (Arts. 3 and 4). Both the Assembly and Council take their decisions by unanimous vote, unless there is a specific provision to the contrary or the matter is one of procedure (Art. 5).

The Secretariat performs secretarial duties for the Assembly and Council and for bodies called into being by their resolutions.[1] The personnel of the Secretariat and the physical plant at Geneva are the sole permanent features of the League of Nations. The Secretariat is analogous to the civil service of a national government. The Assembly and Council are made up of persons who "render their decisions as the representatives of their respective states, and . . . have no standing except as such representatives." That is the situation of delegates to an international conference. Including meetings of the Assembly and Council, the international conferences held at Geneva have been: in 1920, 25; in 1921, 39; in 1922, 58; in 1923, 73; in 1924, 114.

As a mechanism for international conference and the production of multilateral agreement, the League of Nations contrasts with

[1] There are four exceptions. The Secretary-General appoints the staff of the Secretariat, with the approval of the Council; he acts under the Covenant (Art. 6, par. 4) as secretary-general of both Assembly and Council; and he summons the Council under the conditions of Art. 11, par. 1. The Secretariat, also, shall publish all treaties registered.

the former method of bilateral negotiation, practiced by nonmembers states. The ordinary bilateral treaty constitutes an engagement of State A to State B. The Covenant is a multilateral agreement between 55 states, each to each, in 1926. In other words, 55 states are each bound to 54 others, establishing a total network of 2,970 engagements. But, as in the case of a bilateral treaty, A is bound to B and B to A, so that two mutual engagements result from each. The equivalent of the Covenant in bilateral treaties is, therefore, $2{,}970 \div 2 = 1{,}485$. The principle is that of the telephone central station applied to international agreement.

PART I. ORGANIZATION

I. MEMBERS OF THE LEAGUE

[For historical summary, see *Yearbook*, p. 379.]

MEMBERS OF THE LEAGUE OF NATIONS, MARCH 1, 1926 — 55/56.[1]

State	*Member from*
Abyssinia	September 28, 1923
Albania	December 17, 1920
Argentina	July 18, 1919
Australia	January 10, 1920
Austria	December 15, 1920
Belgium	January 10, 1920
Bolivia	January 10, 1920
Brazil	January 10, 1920
British Empire	January 10, 1920
Bulgaria	December 16, 1920
Canada	January 10, 1920
Chile	November 4, 1919
China	July 16, 1920
Colombia	February 16, 1920
Costa Rica	December 16, 1920
Cuba	March 8, 1920
Czechoslovakia	January 10, 1920
Denmark	March 8, 1920
Dominican Republic	September 29, 1924
Esthonia	September 22, 1921
Finland	December 16, 1920
France	January 10, 1920
Germany [1]	
Greece	March 30, 1920
Guatemala	January 10, 1920
Haiti	June 30, 1920
Honduras	November 3, 1920
Hungary	September 18, 1922
India	January 10, 1920
Irish Free State	September 10, 1923
Italy	January 10, 1920
Japan	January 10, 1920
Latvia	September 22, 1921
Liberia	June 30, 1920
Lithuania	September 22, 1921
Luxemburg	December 16, 1920
Netherlands	March 9, 1920
New Zealand	January 10, 1920
Nicaragua	April, 1920
Norway	March 5, 1920
Panama	January 10, 1920
Paraguay	December 26, 1919
Persia	November 21, 1919
Peru	January 10, 1920
Poland	January 10, 1920
Portugal	April 8, 1920
Rumania	April 7, 1920
Salvador	March 10, 1920
Serb-Croat-Slovene State	February 10, 1920
Siam	January 10, 1920
South Africa	January 10, 1920
Spain	January 10, 1920
Sweden	March 9, 1920
Switzerland	March 8, 1920
Uruguay	January 10, 1920
Venezuela	March 3, 1920

[1] The German law covering the Locarno agreements and authorizing German application for entry into the League of Nations was promulgated November 30, 1925, in the *Reichsgesetzblatt*, and reads as follows:

"Article 1. The treaties, which were initialed and attached to the final protocol at Locarno on October 16, 1925, and are to be signed in London on December 1, 1925, to wit:

The German Application

The first formal motion of the German Government with respect to applying for admission to membership in the League of Nations, was taken at a meeting of the cabinet on September 23, 1924. At that time the Fifth Assembly was in session and its work had progressed far enough to make it obvious that the Protocol for the Pacific Settlement of International Disputes would be elaborated. In the previous week, Fridtjof Nansen of the Norwegian Assembly delegation, after consultations with his Scandinavian and other colleagues and with Germans who were present at Geneva, had gone to South Germany and had had an interview with Chancellor Marx, who was on vacation there. On September 22, Herr Stresemann, the minister of foreign affairs, discussed the content of this conversation with Lord d'Abernon, the British ambassador to Germany. At the cabinet meeting on September 23, all the ministers were present and after a two-hour discussion the following communiqué was issued:[1]

A council of ministers presided over by the President of the Reich met to-day. After a detailed discussion of the question of the entrance of Germany into the League of Nations, the unanimous opinion prevailed that the German Government seeks an early entrance of Germany into the League of Nations. It proceeds from the point of view that the questions dealt with by the League of Nations, in particular, the protection of minority populations, the regulation of questions affecting the Saar Basin, the questions of general disarmament in connection with the execution of the military control, as well as the solution of important pending questions of insuring the peaceful cooperation of the nations, can only be satisfactorily accomplished through the participation of

(1) The treaty between Germany, Belgium, France, Great Britain and Italy;
(2) The arbitration convention between Germany and Belgium;
(3) The arbitration convention between Germany and France;
(4) The arbitration treaty between Germany and Poland;
(5) The arbitration treaty between Germany and Czechoslovakia

are approved.

"The final protocol and its annexes are published herewith. [This series, IX, No. 1.]

"Art. 2. The Government of the Reich is authorized to take the steps necessary for the entrance of Germany into the League of Nations.

"Art. 3. This law enters into force on the day following its promulgation."

[1] Translated from *Deutsche allgemeine Zeitung*, September 24, 1924, and *Le Temps*, September 25, 1924.

Germany. It is evident that German participation can be only that of a great power enjoying equal rights.

After the solution of the reparation question realized at the London conference had, in the opinion of the principal participating powers, opened the way to the Government of the Reich for an active discussion of the question of German entrance into the League of Nations, conversations to this end were undertaken in addition to the conversations of the London conference. The result of these inquiries has served as the basic principle for the present decision of the Government of the Reich. In the execution of this decision, the Government of the Reich through its ministry of foreign affairs will come to a definite arrangement with the powers represented in the Council of the League respecting whether the requisite guaranties really exist for the presentation of the German application which would not only settle the position of Germany in the League but also determine certain other pertinent questions inseparably bound up with it.

On October 2, the French council of ministers held a session under the chairmanship of the President of the Republic which lasted three hours and a half. The following communiqué was issued:

The first part of the meeting was devoted to the examination of the memorandum transmitted to the French Government by Germany with a view to its admission into the League of Nations.

The rest of the meeting was devoted to the handling of current affairs.

It was semi-officially added to this communiqué that "the Government decided strictly to maintain the attitude previously set forth by the premier." France "is favorable" to the principle of admission of Germany into the League of Nations. The French Government considers, however, that the common law must be applied to the Governments in the League and that Germany must not benefit by special prerogatives or privileges.

Following the deliberations of the French cabinet, the diplomatic note sent to Berlin, Paris, London and Brussels was discussed by those Governments and, following the receipt at Berlin of their separate replies, the German Government addressed the following note to Geneva on December 12, 1924:[1]

[1] *Official Journal*, VI, p. 323.

BERLIN, December 12, 1924.[1]

On behalf of the German Government, I have the honor to submit to you the following communication:

The German Government is of opinion that political developments during the past year have rendered it possible for Germany to join the League of Nations. Accordingly, the German Government resolved last September to consider the question of Germany's adhesion to the League in the near future. In pursuance of this intention, the Government first entered into communication with the Governments represented on the Council of the League of Nations and submitted to them a memorandum having for its object the elucidation of certain problems of importance connected with Germany's cooperation in the League. As will be seen from the memorandum, a copy of which is appended hereto, the object was to ascertain the attitude of the said Governments with regard to Germany becoming a member of the Council of the League of Nations as well as with regard to the participation of Germany in the sanctions provided for in Art. 16 of the Covenant. The memorandum was also intended to inform the said Governments of Germany's views concerning certain other points connected with the question of Germany's adhesion to the League.

The German Government has now received the answers to the memorandum. It notes with pleasure that its decision has been accorded full approval in the replies furnished by the powers represented on the Council of the League. The German Government, moreover, believes the replies justify it in concluding that its wish for Germany to have a seat on the Council of the League is being favorably considered by the Governments now represented on the Council. On the other hand, so far as Art. 16 is concerned, the replies have not as yet led to a satisfactory conclusion.

As the observations on this point in the memorandum show, the German Government was desirous of finding a way out of the difficulties in which Germany, on account of her peculiar territorial situation, might become involved by the application of this article. The said Governments, however, have either left these difficulties out of consideration or they have not sufficiently appreciated the apprehensions of the German Government. In their replies, they all give expression to the opinion that Germany's application for admission to the League of Nations should be made without reservations and without restrictions; for the rest, they confine themselves to stating that the League of Nations is the competent body to decide the question.

The problem at issue is of such extraordinary importance for Germany's future that the German Government cannot simply leave it for

[1] Translation furnished by the German Government.

later consideration. Under these circumstances, the German Government sees no alternative but to submit the problem to the League of Nations itself. In the hope that the League will recognize the necessity for a prior discussion of the subject and will consequently be prepared to arrange for this now, the German Government begs to present herewith once more the facts of the case and its own interpretation thereof.

Art. 16 regulates the procedure to be adopted against the covenant-breaking state in the case of a violation of peace. The article binds the Members of the League to economic and military measures such as in general have hitherto implied a state of war. In any case, the states participating in such measures must expect to be treated as belligerents by the state affected. It is obvious that the principle underlying such a system of sanctions can only be realized in practice if carried out subject to arrangements and agreements which safeguard the participating Members to the utmost against belligerent acts on the part of the covenant-breaking state. This is not the case under the Covenant of the League of Nations. In principle, it is true, the execution of military operations against the covenant-breaking state is provided for, but not yet regulated. The execution of such measures is not subject to the central authority of the League but is left to the discretion of the individual Members. The success of the sanctions, moreover, may be jeopardized when they are directed against states having at their disposal, as is still the case now, an unlimited and powerful war equipment.

It is true that on account of the foregoing nearly all Members run a certain risk. The risk, however, becomes unbearable in the case of a country like Germany which is centrally situated and completely disarmed. The following facts are illustrative of the situation created by the unilateral disarmament of Germany. Germany, a country with over 60 million inhabitants, with a frontier 5,000 kilometers in length and a coast-line exceeding 2,000 kilometers, has an army of 100,000 effectives all told. Universal compulsory military service has been abolished and no reserves may be trained. Quite apart from the question of their numerical inferiority, the troops which Germany is permitted to maintain can not, in any way, be compared with the armies of other countries. They are entirely lacking in the equipment necessary for modern warfare. They possess no heavy artillery, no air craft and no tanks. The German fortresses on the western frontier have been razed; and the few fortresses remaining elsewhere in Germany are wholly antiquated. In the west 55,000 square kilometers of German territory have been demilitarized, not to Germany's advantage, however, but solely to the advantage of her neighbors.[1] There are no state munition factories in Germany.

[1] This was written long before the engagement of Art. 1 of the treaty of mutual guaranty of Locarno, October 16, 1925.

The capacity of the existing factories producing munitions and implements of war the number and speciality of which have been accurately determined, just suffices to satisfy current peace-time demands. Any rapid adaptation of other factories to meet the demands of the army in the event of possible hostilities has been rendered impossible by the demolitions effected under the treaty of Versailles. All measures of mobilization are prohibited. The strength of the navy is far below the armament limits fixed in the Washington agreement of February 6, 1922. On the other hand, apart from the navies, the armament possibilities of the other European states are entirely unlimited and their output of modern war material is subject to no restrictions. Some states adjoining Germany possess, even according to their peace-time status, 5,000 tanks, 1,500 military aeroplanes and 350 batteries of heavy artillery; all of these states have at their disposal large reserves of material in the event of war. One such neighboring state, a state with fewer than 8 million inhabitants, has a standing army of 80,000 men; another, with fewer than 14 million inhabitants, has a standing army of over 150,000 men; a third, with fewer than 30 million inhabitants, has a standing army of 275,000 men; a fourth, with fewer than 40 million inhabitants, has a standing army of over 700,000 men. All these armies are based on the system of universal compulsory military service, which, in the event of war, insures the utilization of the entire strength of the nation.

Hence, Germany stands militarily quite impotent in the midst of a heavily armed Europe. Should the measures provided for in Art. 16 lead to hostilities, Germany is incapable of effectively protecting her territory against military invasion. She would be completely dependent upon the Members of the League for military protection, without there existing any power to compel these to afford that protection. In the majority of conceivable cases, Germany would be so to speak predestined to be the scene of European League wars. Even if the covenant-breaking state should not be an immediate neighbor of Germany, it is to be feared that unfavorable developments in military operations might carry the war into her unprotected territory. Even assuming the loyal fulfilment of their obligations under the Covenant, one must bear in mind that the League's non-German troops would never defend German soil with the same devotion that they would show in the case of their own country being involved. That the German troops, in view of their small numbers and their lack of all modern means of warfare, could play only an insignificant part in such wars needs no further proof.

All this is the necessary consequence of the fact that the entire organization of the League of Nations as a whole is hardly compatible with the military preponderance of individual states, whether they are Members of the League or not. The organization of the League presupposes that

the armaments of the several states have been fixed for them approximately on the basis of taking into account their geographical situation and the extent of their territory. This condition, in so far as Germany is concerned, will not be fulfilled even when the disarmament of the other states has been effected in accordance with the covenants of the League of Nations; for these set a limit to the reduction of military powers which does not prejudice either the requirements of national safety or the enforcement by common action of international obligations. The general standard of armament, therefore, would even then be far higher than the German standard.

It is the opinion of the German Government that there is only one way out of the difficulties arising from this disparity in case of Germany's participation in the execution of sanctions: Should international conflicts arise, Germany ought to be at liberty to determine how far she will take an active part in them. This is no special privilege which Germany is demanding. She merely asks that her peculiar situation be taken into consideration when her obligations as a Member of the League are being fixed. Otherwise, by her becoming a Member of the League of Nations, she would be compelled to waive her right to neutrality, the last defense of a disarmed people.

The German Government is not able to judge in what form its desire could be fulfilled. It is not in possession of any authentic information as to how the system of sanctions is planned and regulated in detail. From the "Protocol on the Pacific Settlement of International Disputes"[1] which you transmitted to the German Government, together with your esteemed communication dated October 27 of this year,[2] the German Government infers that considerations on the lines of the above have already been weighed by the League of Nations. According to Art. 11, par. 2, of the said protocol the geographical and military situation of the individual states as regards their participation in sanctions is to be taken into account. Apart from the fact that the protocol has not yet come into force, it would seem, however, that the obligation of all Members to participate in blockade measures, to give active support to economic sanctions and to suffer the passage through their territory of the participating forces is to remain unaffected by the said provision. This would deprive all Members of the possibility of remaining neutral. Thus, Germany even after the coming into force of the protocol would still be faced with all the dangers which were briefly indicated above.

The German Government hopes that the League of Nations will recognize the justification of these apprehensions and will discover means of

[1] This series, VII, No. 7.

[2] The reference is to a circular letter (C. L. 161. 1924. V) transmitting a certified true copy of the protocol.

removing them. It is of opinion that it is possible to take account of German interests without thereby in any way doing violence to the organization of the League of Nations or to its work. May I, therefore, request you, Sir, to place at the earliest convenient date, the whole question before the competent authorities of the League of Nations.

(Signed) STRESEMANN.

MEMORANDUM BY THE GERMAN GOVERNMENT

The German Government recognizes that only by safeguarding peace and establishing international solidarity will it be possible for humanity to raise itself to a higher level of civilization. The welding together of states into a single League of Nations would appear the most promising means of realizing this ideal. In 1919 Germany submitted through her delegation to the Peace Conference at Versailles a request for admission to the League of Nations, which was refused by the Allied and Associated Governments.[1] The reason why this request has not since been renewed is the fact that, in view of the political situation as it developed after the coming into force of the treaty of Versailles, the German Government did not consider that this cooperation in the work of the League would be likely to produce useful results. Now, however, particularly in consideration of the proceedings of the London conference and its results, the German Government believes that the foundation for useful cooperation with the League of Nations has been laid. It has, therefore, decided to seek the admission of Germany into the League of Nations without delay.

In view of the tenor of the previous international discussions on this question, the German Government do not consider it opportune to apply for admission to the League of Nations without further preparation. In order to avoid anything which might react unfavorably on the calmer political atmosphere of the moment, the German Government desires, first of all, candidly to discuss with the Governments represented on the Council certain questions which are of paramount importance for the future cooperation of Germany in the great work of the League of Nations.

1. The German Government has no intention of claiming special privileges for Germany. It recognizes that the full development of the League can only proceed along lines of absolute equality between the states of which it is composed. However, so long as the Covenant of the League of Nations assigns a privileged position to certain states, inasmuch as it grants them the right of permanent representation on the Council, which is primarily the executive organ of the League, the German Govern-

[1] For correspondence exchanged at that time see Sen. Doc. 149, 66th Cong., 1st sess., p. 14–30.

ment must claim the same right for Germany. In applying for admission to the League, Germany must therefore possess the certainty that immediately upon her admission she will obtain a permanent seat on the Council. The German Government assumes at the same time that upon Germany's admission to the League she would *ipso facto* take her place on a footing of equality in the other organizations of the League, and especially in the Secretariat. A permanent seat on the Council can only be granted by a unanimous decision of the powers represented on that body. The German Government therefore requests the . . . Government to be so good as to inform it whether it would be prepared at the proper moment to give instructions in that sense to its representative on the Council.[1]

2. Art. 16 of the Covenant provides for the participation of the states Members of the League in coercive measures against any state breaking the peace. So long as the present inequality in armaments consequent upon the disarmament of Germany continues to exist, Germany — unlike other Members of the League — will not be in a position to take part in any coercive measures which may be undertaken in virtue of Art. 16. A disarmed nation, which does not even possess the necessary means of defending its frontiers, surrounded by fully armed neighbors equipped with all the most up-to-date implements of war, can not possibly agree beforehand to abandon its neutrality in the event of an international conflict. It would run the risk of being regarded by the state against which the League is taking action as a belligerent nation and of being treated as such. For this reason the German Government will be compelled to make a reservation to this effect when submitting its application for admission. It would be glad to know beforehand what the . . . Government's views are in regard to this matter.[1]

3. Art. 1 of the Covenant of the League of Nations makes the admission of new members contingent upon their giving effective guaranties of their sincere intention to observe their international obligations. In the opinion of the German Government there can be no reason to doubt that the requisite guaranties exist in the case of Germany. The German Government, however, is prepared to confirm by a formal declaration to the League of Nations its sincere intention to observe its international obligations. Such a declaration would not, however, in any way affect the declarations made on previous occasions by the German Government in regard to these obligations. In particular, the declaration referred to should not be understood to imply an admission by the German Government of those assertions on which Germany's obligations are based and which lay a moral responsibility upon the German people. In this con-

[1] See the Swedish reply to Germany of November 22, 1924, for typical official comment on this point (*Official Journal*, VI, p. 326).

nection the German Government feels that the actual fulfilment of Germany's treaty obligations does not depend solely on her good intentions. It must again lay stress on the fact that an essential condition for the carrying out of the London agreement is the speedy reestablishment in the Rhineland and Ruhr of conditions compatible with the provisions of the treaty of peace.

4. Art. 22 of the Covenant of the League of Nations provides that the tutelage of peoples not yet able to stand by themselves should be intrusted to advanced nations who, by reason of their resources and their experience, can best undertake this responsibility. Germany, who since her defeat has been excluded from all colonial activities, expects that in due time she will be given an active share in the working of the mandates system of the League of Nations.

The German Government feels convinced that, if the above considerations are taken into account, conditions will be created which will react favorably not only on the interests of Germany but also on those of the League. Germany is prepared to cooperate in the work of the League, in which she considers she is entitled to share, and she trusts that she may be instrumental in bringing the ideals of the League nearer realization. Germany may hope this the more confidently since her admission would constitute an appreciable step toward the establishment of the universality of the League. The universality of the League of Nations must be regarded as an essential condition, without which it can not reach a state of complete efficiency. Only when universality has been established will the true spirit of democracy, the spirit of reconciliation and good will, which has borne its first fruits in London, preside over the solution of all those problems which still divide the peoples. The German Government will always consider it its foremost duty to bend all its endeavors toward the attainment of this goal.

On March 14, the Council examined and unanimously adopted the text of the memorandum[1] given below in reply to the German note:

The Council of the League of Nations has given careful consideration to the communication of the German Government dated December 12, 1924, regarding Germany's entry into the League.

The Council notes with satisfaction the declaration, with which that communication opens, that the German Government are of the opinion that the "political developments during the past year have rendered it possible for Germany to join the League", together with the statement

[1] *Official Journal*, VI, p. 490.

in the inclosed memorandum that the German Government have "decided to seek the early admission of Germany" to the League of Nations.

The German Government have already consulted the ten Governments[1] who are represented on the Council and have received authoritative replies from all of them. Any observations which can now be made by the Council, composed as it is of representatives of these same Governments, will obviously not be at variance with those replies. The Council is glad, therefore, to learn that, with one exception, which is dealt with later, the replies are satisfactory to the German Government.

The Council observes that the German Government state with reference to the conditions in which Germany desires to enter the League, that they have no intention of "claiming special privileges for Germany", but that they expect she shall enter on a footing of equality.

The Council notes that all the ten Governments are in complete agreement with this condition.

The Council indeed regards this principle of equality, involving as it does both equal rights and equal obligations for all, as being of the essence of the League's constitution.

At the same time it feels bound to point out that this principle has an important bearing on the special question which the German Government raise with regard to Art. 16 of the Covenant. Though it is only in relation to this one article that Germany asks for an exceptional position this article is of capital importance for the whole structure of the League, comprising as it does an important part both of the safeguards enjoyed, and the responsibilities accepted, by all the Members.

The German Government, in stating their position on this subject, call attention to the military position of Germany resulting from the treaty

[1] The Brazilian response to the German note of September 29 was made on December 1, 1924. Referring to Germany's seat on the Council, it said:

"The Brazilian Government, moreover, believes that the questions embodied in the desires expressed by Germany ought not to be discussed between governments, but preferably by the Members of the League of Nations between themselves, in order that the various aspects of this question may be better understood from the point of view of the other Members. The German Government may, in any case, be certain that we will examine the suggestions contained in the memorandum of September 29 impartially and in a conciliatory spirit with the firm purpose of finding appropriate solutions, without prejudicing the obligations of Brazil and the provisions of international law which are applicable according to the character of each case.

"Having made these observations, Brazil has no objection to raise against the entrance of Germany as a Member of the League of Nations, but on the contrary desires it. Neither is it opposed, in principle, to the new member receiving a permanent seat." [Translated from *Le Temps*, March 26, 1926.]

For quotations from the British and French replies to Germany see Sir Austen Chamberlain's speech in the House of Commons, March 23, 1926, London *Times*, March 24, 1926, p. 8.

of Versailles and express the fear that if the measures provided for in the article lead to hostilities, she would be incapable of protecting her territory against a military invasion. The Government add that in their view, there is only one way out of the difficult situation in which Germany would be placed: "Should international conflicts arise, Germany ought to be at liberty to determine how far she will take an active part in them." Later in the communication, the Government express Germany's objection to being compelled, by virtue of entry into the League "to waive the right to neutrality".

The Council considers that the following observations on this point may serve a useful purpose. The character and extent of a Member's active cooperation in military measures undertaken by the League in pursuance of the Covenant, must vary with the military situation of the Member in question. Under the existing provisions of the Covenant, it is the duty of the Council to recommend what effective military, naval or air forces the Members of the League shall contribute to the armed forces to be used to protect the covenants of the League, and it would be for Germany herself to say to what extent she was in a position to comply with the recommendations of the Council. The Council would further remind the German Government that a Member of the League, and of the Council, would always have a voice in deciding the application of the principles of the Covenant.

As regards economic measures, the states Members of the League themselves decide, either separately or by prior agreement, the practical steps to be taken for the execution of the general obligation which they have undertaken. But the provisions of the Covenant do not permit that, when action is undertaken in pursuance of Art. 16, each Member of the League should decide separately whether it shall take any part in that action. The Council feels bound to express its clear opinion that any reservation of this kind would undermine the basis of the League of Nations and would be incompatible with membership of the League. It seems to the Council impossible that a Member of the League, and of the Council, should, in the event of operations undertaken against a covenant-breaking state, retain a status which would exempt its nationals from the general obligations imposed by the Covenant. The Council need hardly point out that other countries whose military forces have also been limited by the provisions of the existing treaties, have, on entering the League, accepted the obligations of the Covenant without reservation.

The Council trusts that those observations may be of use in elucidating the attitude of its Members with regard to the questions raised by the German Government.

The general conditions of entry of new Members are contained in

Art. 1 of the Covenant, which leaves the decision to the Assembly, which has on repeated occasions declared itself in favor of the universality of the League. Only by active cooperation as a Member can a country have its due influence in the decisions of the League — decisions which can not fail to be of far-reaching importance.

In conclusion the Council wishes to express to Germany its sincere wish to see her associated in its labors, and thus play, in the organization of peace, a part corresponding to her position in the world.

Application. The formal application of Germany for admission to the League of Nations was contained in the following letter from the minister of foreign affairs of the Reich.[1]

BERLIN, February 8, 1926.

(Translation)
Foreign Office.

SIR, — With reference to the German memorandum of September 1924, to the Governments represented on the Council, and to the German note addressed to you on December 12, 1924, and the reply thereto of the Council of the League dated March 14, 1925, as well as to the note of the other parties to the Locarno treaties of December 1, 1925, of which a copy is attached, I have the honor, in accordance with Art. 1 of the Covenant of the League of Nations, to propose herewith in the name of the German Government the admission of Germany to the League of Nations. I beg you to put this proposal on the agenda of the Assembly as soon as possible.

I have the honor,

(Signed) STRESEMANN.

Note: Annex F to the Locarno Agreements.

LONDON, December 1, 1925.

SIRS, — The German delegation has requested certain explanations in regard to Art. 16 of the Covenant of the League of Nations.

We are not in a position to speak in the name of the League, but in view of the discussions which have already taken place in the Assembly and in the commissions of the League of Nations, and after the explanations which have been exchanged between ourselves, we do not hesitate to inform you of the interpretation which, in so far as we are concerned, we place upon Art. 16.

In accordance with that interpretation, the obligations resulting from the said article on the Members of the League must be understood to mean

[1] League of Nations, A. 4. 1926, (Special).

that each state Member of the League is bound to cooperate loyally and effectively in support of the Covenant and in resistance to any act of aggression to an extent which is compatible with its military situation and takes its geographical position into account.

(Signed) EMILE VANDERVELDE.
(Signed) ARI. BRIAND.
(Signed) STANLEY BALDWIN.
(Signed) AUSTEN CHAMBERLAIN.
(Signed) VITTORIO SCIALOJA.
(Signed) ALEXANDER SKRZYNSKI.
(Signed) EDOUARD BENEŠ.

DELEGATES TO THE LEAGUE OF NATIONS

The existence of the League of Nations results in an almost continuous series of conferences and committee meetings at which Member and even nonmember states find it advantageous to have representatives. As a consequence, many states, especially those geographically distant from Geneva, have found it beneficial for the conduct of their international relations to make regular provision for representation at Geneva. The purposes of such representation are described in a letter of the prime minister of Canada, Mr. Mackenzie King, December 18, 1924, addressed to the Secretary-General:

I have the honor to inform you that with the object of removing certain disadvantages under which Canadian delegates to the meetings of the Assembly of the League of Nations, of the International Labor Conference and other conferences promoted by these bodies labor owing to Canada's distance from the headquarters of the League, and of providing more efficient means for the assistance of such delegates, the Canadian Government have decided to create the position of permanent Dominion of Canada Advisory Officer for League of Nations purposes, the holder of which shall reside in Geneva, in order to establish and maintain as close relations as possible with the Secretariats of the League of Nations and of the International Labor Office, to keep the Government of Canada informed in regard to matters arising from time to time within the sphere of the activities of these organizations which may be of concern to them, generally to act in such matters in an advisory capacity to the Government of Canada and to Canadian delegates to the conferences referred to, and should occasion require, to act as the Government may determine in substitution for a Government delegate.

The following states have permanent representatives accredited to the League of Nations:

Albania
Argentine Republic
Austria
Brazil
Bulgaria
Canada
Chile
China
Czechoslovakia
Denmark
Finland
Greece
Hungary
Irish Free State
Japan
Latvia
Liberia
Lithuania
Nicaragua
Persia
Poland
Rumania
Serb-Croat-Slovene State
Siam
Venezuela

Many states Members have reorganized their foreign offices so as to provide for a League of Nations section in the ministry whose special duty it is to conduct necessary business with Geneva.

II. NONMEMBERS OF THE LEAGUE

[See also *Yearbook*, p. 381.]

GOVERNMENTS NOT MEMBERS — 8/9

Afghanistan
Ecuador
Egypt
Germany[1]
Mexico
Nejd, Sultanate of
Russian Union of Socialist Soviet Republics
Turkey
United States of America

Note on Nejd. The sultanate of Nejd is dominant in the Arabian peninsula, where it controls Nejd, Hail, El Hasa, Katif, Jubail and, since 1925, the Hejaz. The people of Nejd are Wahabite, that is, of a purist Moslem sect.

'Abdu'l-'Aziz ibn 'Abdu'r-Rahman al-Faisal al Sa'ud, the present sultan, recovered the Wahabi capital of Riyadh in 1901, and thereafter set about organizing the nomadic Bedouin into civic communities under cover of a Wahabi revival. This involved the expulsion of the nominal suzerain, the Turk, from the Arabian peninsula, leaving the Arabs the opportunity to work out their own problem without any foreign control. Ibn Sa'ud annexed Katif in 1910 and expelled the Turks from El Hasa in 1914. The independence of the kingdom of the Hejaz was proclaimed by the grand sherif of Mecca on June 5, 1916. In May, 1919, Ibn Sa'ud routed a Hejazi army sent to occupy the oasis of Khurma, the possession of which was in dispute between the two countries. There followed Wahabi occupation of other disputed points, as well as parts of Asir to the south and the whole of Jebel Shammar in the central peninsula. King Husein of the Hejaz assumed the title of caliph early in 1924, following the deposition by the Turks of their sultan. This act contributed to the breakdown of a peace conference between the Hejaz and Nejd, held under British auspices in Kuwait (Koweit). There followed a resumption of hostilities in which Ibn Sa'ud made steady advances.

King Husein of the Hejaz abdicated on October 3, 1924, in favor of his eldest son Ali, who was chosen king by the notables of Jeddah. Ibn Sa'ud continued action against Ali, who gave up Mecca on October 14. On October 16, Ibn Sa'ud issued a proclamation that neither Husein nor his sons would be allowed to rule in Hejaz. A desultory siege of Jeddah began. Husein took refuge at Cyprus in June, 1925.

[1] For German application for admission see *supra*, p. 154.

At about that time Ali requested the British Government to mediate. The sultan of Nejd replied that he was "unable to accept such mediation."[1] Jeddah was occupied by Ibn Sa'ud on December 19, 1925. Ali abdicated after the formation of a national government,[2] ending the authority of the Hashimite family in the Hejaz after more than 1,000 years. Ibn Sa'ud proclaimed himself sultan of Hejaz early in 1925.

[1] The British prime minister to ex-King Husein, October 27, 1925, London *Times*, November 20, 1925, p. 13.

[2] London *Times*, December 22, 1925, p. 12.

III. ORGANS

[See *Yearbook*, p. 393.]

"Action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat." — *Covenant*, Art. 2.

1. THE SIXTH ASSEMBLY

[For the Assembly see *Yearbook*, p. 393.]

The Sixth Assembly of the League of Nations met at Geneva from September 7–26. Delegations were sent by 49 states Members, namely:

Abyssinia
Albania
Australia
Austria
Belgium
Brazil
British Empire
Bulgaria
Canada
Chile
China
Colombia
Cuba
Czechoslovakia
Denmark
Dominican Republic
Esthonia
Finland
France
Greece
Haiti
Hungary
India
Irish Free State
Italy
Japan
Latvia
Liberia
Lithuania
Luxemburg
Netherlands
New Zealand
Nicaragua
Norway
Panama
Paraguay
Persia
Poland
Portugal
Rumania
Salvador
Serb-Croat-Slovene State
Siam
South Africa
Spain
Sweden
Switzerland
Uruguay
Venezuela

There were present at Geneva three prime ministers (of Austria, France and Norway) and sixteen foreign ministers, either as delegates to the Assembly or as representatives of their respective countries on the Council.

The Assembly was opened by M. Painlevé, prime minister of France and acting president of the Council of the League. Raoul Dandurand, first delegate of Canada, was elected president of the Sixth Assembly, receiving 41 votes out of 47 cast.

The work was distributed as in preceding years among six committees, on each of which all nations represented at the Assembly were entitled to have a delegate. The committees, with their elected officers, were as follows:

No. 1. *Legal and Constitutional Questions* (amendment to Art. 16 of the Covenant, establishment of a conciliation commission attached to the Permanent Court of International Justice); Chairman: M. Scialoja (Italy); vice-chairman: M. Fernandes (Brazil).

No. 2. *Technical Organizations of the League* (work of the Economic and Financial Commission, of the Committee on Communications and Transit, of the Health Organization and of the Committee on Intellectual Cooperation); Chairman: Jonkheer van Eysinga (Netherlands); vice-chairman: M. Veverka (Czechoslovakia).

No. 3. *Reduction of Armaments.* — Chairman: M. Nintchitch (Serb-Croat-Slovene State); vice-chairman: M. de Broukère (Belgium).

No. 4. *Budget and Financial Questions.* — Chairman: M. Costa (Portugal); vice-chairman: Mr. MacWhite (Irish Free State).

No. 5. *Social and General Questions* (opium traffic, protection of children and young people, refugees, international municipal cooperation); Chairman: M. Mowinckel (Norway); vice-chairman: M. Garay (Panama).

No. 6. *Political Questions* (slavery, minorities, rôle of the press in the organization of peace); Chairman: M. Guerrero (Salvador); vice-chairman: Dr. Nansen (Norway).

The Agenda Committee, which examines the procedure to be followed with regard to the inclusion of fresh questions in the Assembly Agenda, was composed as follows:

Alexander Skrzynski (chairman) (Poland)
Sir Joseph Cook (Australia)
Christo Kalfoff (Bulgaria)
Emilio Bello-Codesido (Chile)
M. Emilio de Palacios (Spain)
M. Idman (Finland)
Phya Prabha Karavongse (Siam)

The chairmen of the Assembly committees are *ipso facto* vice-presidents of the Assembly. After their designation the Assembly proceeded to the election of six further vice-presidents, thus completing its General Bureau, which consists of the President and the vice-presidents. To these the Sixth Assembly added the chairman

of the Agenda Committee. The six vice-presidents elected by the Assembly were:

Viscount K. Ishii (Japan)
Aristide Briand (France)
César Zumeta (Venezuela)
Austen Chamberlain (British Empire)
Prince Arfa (Persia)
Jon S. Duca (Rumania)

The Sixth Assembly held 19 plenary meetings, ten of which were devoted to the discussion of the report of the work of the Council and the Secretariat since last Assembly. A debate on arbitration, security and reduction of armaments, in which many speakers took part, led to the adoption of a resolution providing for the study by a special commission of the problem of the reduction of armaments. In the economic field, the Assembly decided to set up a preparatory committee to study economic questions which might form a basis of discussion for a general economic conference. As in preceding years, the Assembly, after reviewing the work of the technical organizations and commissions since its last meeting, adopted resolutions approving their work and outlining their programs for the future.

The decisions of the Assembly are noted in connection with the work throughout this volume.

A special session of the Assembly convened March 8, 1926, at Geneva with an agenda as follows:

1. Request of the German Government for admission to the League of Nations;
2. Decisions of the Assembly on Council proposals, if any, in application of Art. 4 of the Covenant of the League of Nations.
3. Budgetary questions.
4. Construction of an Assembly hall.

2. THE COUNCIL

[For general notice see *Yearbook*, 1925, p. 397.]

Meetings. The Council met as follows:

33. Geneva, March 9–14, 1925.
34. Geneva, June 8–13, 1925.
35. Geneva, September 2–28, 1925.
36. (Extraordinary.) Paris, October 26–30, 1925. (Greco-Bulgarian incident.)
37. Geneva, December 7–16, 1925.

Members. The members of the Council during 1925 were the following states:

Permanent: British Empire, France, Italy, Japan.

Nonpermanent: Belgium, Brazil, Czechoslovakia, Spain, Sweden and Uruguay.

The same states were elected as nonpermanent members by the Assembly for 1926.

The Sixth Assembly in this connection adopted the following resolution on a motion by Venezuela:

The Assembly,

Noting that the nonpermanent members of the Council at present in office have been re-elected for a year;

Considers the meaning of this re-election to be that it is subject to the nonpermanent part of the Council being renewed as from the election of 1926 by application of the principle of rotation.

The Sixth Assembly further reiterated the following recommendation adopted unanimously by the Assemblies of 1922, 1923 and 1924:

It is desirable that the Assembly, in electing the six nonpermanent members of the Council, should make its choice with due consideration for the main geographical divisions of the world, the great ethnical groups, the different religious traditions, the various types of civilization and the chief sources of wealth.

On September 26 the Assembly elected the nonpermanent members of the Council for 1926. Forty-nine states voted, the absolute majority being 25. The members elected were:

	43 votes.
Brazil	40 votes.
Uruguay	35 votes.
Czechoslovakia	35 votes.
Spain	34 votes.
Sweden	32 votes.
Belgium	

Members in Interest. Art. 4, par. 5, of the Covenant provides that "any Member of the League not represented on the Council shall be invited to send a representative to sit as a member . . . during the consideration of matters specially affecting the interests of that member." The same principle is applied as to nonmembers. Under these circumstances the following states were represented on the Council during 1925:

33rd Session. — Austria, Hungary, Greece, Lithuania, Poland, Rumania, Serb-Croat-Slovene State and Turkey.

34th Session. — Austria, Danzig, Greece, Hungary, Lithuania, Poland, Rumania, Serb-Croat-Slovene State and Turkey. The Commissioners-General of the League at Budapest and Vienna and the chairman of the Financial Committee also took part.

35th Session. — Australia, Austria, Greece, Hungary, Lithuania, New Zealand, Persia, Poland, Portugal, Rumania, Serb-Croat-Slovene State, South Africa and Turkey took part in the proceedings on questions particularly concerning them.

36th Session. — Bulgaria and Greece.

37th Session. — Albania, Austria, Bulgaria, Danzig, Denmark, Greece, Hungary, Netherlands, Persia, Poland, Rumania, Serb-Croat-Slovene State and Turkey. The Commission of Inquiry on Bulgaro-Greek Affairs, the Assistant High Commissioner for Hungary, the Commissioner-General for Austria, the Committee of Control of the Austrian Loan, the Permanent Mandates Commission, the High Commissioner for Danzig, the Commissioner on the Iraqi-Turkish Frontier and the Mixed Commission on the Greco-Turkish Exchange of Populations were also represented or present.

Competence in Disputes. Procedure before the Council in the matter of disputes was analyzed and interpreted by the Per-

manent Court of International Justice in the advisory opinion requested with respect to the Council's competence in fixing the Turkish-Iraqi boundary under Art. 3 of the treaty of Lausanne. By that article "the dispute shall be referred to the Council of the League of Nations" and allusion is made to "the decision to be reached." The Court thus had to deal with Council procedure both when conferred by the parties and under the Covenant. Having concluded that the intention of the parties was to secure a binding solution of the dispute, the Court addressed itself to the question of the nature of the decision the Council must reach.[1]

In the question put to the Court, the Council had in an explanatory phrase mentioned the three terms "arbitral award", "recommendation" or "simple mediation". The Court observed, in the first place, that if the word "arbitration" were taken in a wide sense, characterized simply by the binding force of the pronouncement made by a third party to whom the interested parties had had recourse, it might well be said that the decision in question was an "arbitral award". This term, on the other hand, would hardly be the right one if by it were meant the technical conception of arbitration dealt with in the Hague convention of 1907. For this reason, the Court did not attach any importance to certain consequences which had been deduced from this conception, which was not in any case applicable to the functions of the Council. In the second place, this fact did not prevent the Council from being called upon, by the mutual consent of the parties, to give a definitive and binding decision in a particular dispute. It was true that the powers of the Council were dealt with in Art. 15 of the Covenant and that this article only contemplated recommendations without binding force. There was, however, nothing to prevent the parties, by an agreement entered into in advance, from recognizing that, in so far as they were concerned, the recommendations of the Council would have the effect of decisions which, by virtue of their previous consent, compulsorily settled the dispute. Since the decision which the Council had to take in this case would not, therefore, by reason of the binding force with which it was endowed, be described as a simple "recommendation", still less would it be a "simple mediation" intrusted to the Council. The Court, however, felt called upon

[1] Digested from Publications of the Court, Series B, No. 12.

to observe that in agreeing to refer the dispute to the Council of the League of Nations, the parties certainly did not lose sight of the procedure by mediation and conciliation, which formed an essential part of the functions of that body. It was in the event of the failure of that procedure that the Council would make use of its power of decision.

The second question put to the Court by the Council was whether the decision to be taken must be unanimous or might be taken by a majority and whether the representatives of the parties might take part in the vote.

On the basis of arguments drawn from the nature of the Council — for the dispute, though not submitted to that body under a clause of the Covenant, had nevertheless been referred to the Council with the organization and functions conferred upon it by the Covenant — the Court concluded that the rule of unanimity was naturally and even necessarily indicated. Again this rule was explicitly laid down in Art. 5 of the Covenant and it admitted of no exceptions other than those expressly provided for, and none of these were applicable in the present case. In the Court's opinion, however, the strict rule of unanimity was qualified by the principle, which found expression in several clauses of the Covenant, that votes recorded by the representatives of parties did not affect the required unanimity. This qualification of the strict rule of unanimity was indicated with peculiar force in the present case, since to require that the representatives of the parties should accept the Council's decision would be tantamount to giving them a right of veto, which would hardly be in conformity with the intention of the treaty of Lausanne.

3. THE SECRETARIAT

"The Permanent Secretariat shall be established at the seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

"All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

"Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

"The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable." — *Covenant*, Art. 6.

"The members of the Secretariat act, during their period of office, in an international capacity, and are not in any way representatives of their own country." [1]

As the work of the Secretariat has developed, additional members, additional sections have been added. The main scheme has, however, remained unchanged and the following list of chief divisions as at present constituted serves to visualize the duties and the groupings of a personnel which numbers about 465 persons of 34 different nationalities, both men and women.

GENERAL ORGANIZATION

Secretary-General . .	Sir Eric DRUMMOND (British).
Under Secretaries-General .	Joseph A. AVENOL (French), Deputy Secretary-General;
	Inazo NITOBE (Japanese), Director of International Bureaus Section;
	Bernardo D. ATTOLICO (Italian), in charge of internal administration and Disarmament Section.
Political Section . . .	Paul Joseph MANTOUX (French), director.
Information Section . .	Pierre COMERT (French), director;
	Arthur SWEETSER [2] (American), assistant director.
Legal Section . .	Raoul FERNANDES (Brazilian), director.
Financial Administration .	Sir Herbert Brown AMES (Canadian), director.

[1] Memorandum of Secretary-General to Fifth Session of the Council, May 19, 1920, *Procès-verbal of the 5th Session*, p. 219.

[2] On leave of absence. Arthur Bullard (American) is occupying this post.

SPECIAL ORGANIZATIONS

Administrative Commissions and Minorities Questions	Erik Andreas COLBAN (Norwegian), director.
Economic and Financial Section	Sir James Arthur SALTER (British), director.
Mandates	V. CATASTINI (Italian), chief of section; Huntington GILCHRIST (American), member of section.
Transit	Sir James Arthur SALTER (British), director.
Disarmament . . .	Bernardo D. ATTOLICO (Italian), director; S. de MADARIAGA (Spanish), chief of section.
Secretariat of military, naval and air subcommissions	Capt. M. N. MATHENET (French), military; Commander C. M. BLACKMAN (British), naval; Capt. Bruno BRIVONESI[1] (Italian), air.
Social Questions and Opium Traffic . .	Dame Rachel E. CROWDY (British), chief of section.
Health	Dr. Ludwik RAJCHMAN (Polish), director.

Liaison offices at London, Paris, Rome, The Hague, Budapest and Turkey.

INTERNAL SERVICES

Accountants' Branch . .	P. G. WATTERSON (British), chief accountant.
Establishment . . .	Howard R. HUSTON (American), chief of internal services.
Distribution Branch . .	Miss M. E. HOCKING (British), chief of service.
Internal Control Office .	P. J. de MAKAY (Swiss), control officer.
Staff Branch . . .	Miss N. WILLIAMS (British), head.
Secretariat of the Staff Committees . . .	Mme. D. M. A. ROHNER-FROSALI (Swiss).
Interpreters and Translators	French: G. DEMOLON, chief of service. English: G. P. DENNIS, chief of service.
Précis-writing Department and Printing and Publishing Branch . .	E. H. R. VIGIER (French), chief of section.
Précis-writing Department	John L. PALMER (British), assistant chief of section.
Editor of the Official Journal	Dr. Gertrude C. DIXON (British).
Drafting Committee . .	Major A. BUXTON (British), secretary.
Library	Miss Florence WILSON (American), librarian.
Verbatim Reporter . .	E. M. WARD (British).
Pool of Shorthand Typists	Mme. J. PIACHAUD-MAYRAS (Swiss), head of department.
Registry	Dr. K. S. T. GIHL (Swedish), registrar.

[1] On leave without pay and replaced by Capt. U. Leone.

4. FINANCES OF THE LEAGUE

[See *Yearbook*, p. 403.]

Supervisory Commission

The Supervisory Commission met on January 23 and again on April 29. It has to consider financial and administrative questions referred to it by the Assembly, to examine the audited accounts and the draft budget to be placed before the next Assembly.

The Committee on the Allocation of Expenses met at Paris from April 22 to 25 and completed a scheme which was voted by the Sixth Assembly for the years 1926, 1927 and 1928. This complicated matter had been studied since 1921. At one time it was considered that net revenue was a good index of capacity to pay. It was, however, found that, through the upheaval caused by the war, most countries were no longer able to preserve a due relation between taxation and national resources. They had been forced by sheer necessity to levy exorbitant taxes or to resort to the floating of various kinds of loans. The conclusions drawn from an analysis of the budget receipts therefore lost much of their significance. The committee in 1923 had concluded:[1]

> The best method of escape from this dilemma appears to be to take the other side of the budget — the expenditure side. Suppose that for a given year we are in possession of all the items of every kind which make up the budget expenditure of the respective Members of the League. Any one of these expenditure budgets taken individually will correspond fairly closely to the revenue of the state in question for the same financial year. . . .
>
> It will, however, be possible to analyze these various expenditure budgets — to eliminate all factors which are abnormal or which are peculiar to certain states, and to retain only those which may be used as "comparable items" in the general analysis.

"The budgets for 1923 of all the 54 Member states have been analyzed and all 'abnormal items' of expenditure eliminated," the Fourth Committee of the Sixth Assembly reported.[2] "Under

[1] A. 23. 1923. II.

[2] A. 125. 1925. II.

normal items of expenditure are included: defense, general administration, financial administration, justice, posts and telegraphs, colonies, economic administration, public works, education, church, health, social administration, pensions and miscellaneous items. The various items have been grouped in different ways by the Allocation Committee after converting the national currencies into dollars so as to form a series of indices which could guide the committee in making its decisions. The Allocation Committee, however, . . . did not find it possible to employ these indices with any sort of mathematical precision nor claim that they alone constitute by any means an unerring guide of capacity to pay."

The allocation passed by the Sixth Assembly was based on postwar data and represented the surmounting of many difficulties in weighing the fiscal ability of the members. "Thus some states are much more highly socialized than others, with the result that the magnitude of certain items of their expenditure is a measure rather of their social policy than of their national income; in some countries a greater part of the total administration is undertaken by the central and in others by the local governments. To compare the various budgets of a federal with the single budget of a unitary state necessarily involved a number of highly technical problems, some of which are scarcely solvable."

The Assembly approved the budget for 1926, the total of which amounts to 22,930,633 gold francs as compared with 22,658,138 gold francs in 1925. Expenditure is classified under the following heads:[1]

	Gold Francs
Secretariat and Special Organizations	12,365,004
International Labor Organization	7,039,938
Permanent Court of International Justice	1,900,401
Buildings at Geneva	1,375,000
Capital expenditure	250,290
	22,930,633

The League accounts at the end of 1924 showed a surplus of 9,395,721 gold francs. From this surplus 2,110,420 francs were taken to complete the fund of 3,200,000 francs provided for the building of the new offices for the International Labor Organiza-

[1] *Official Journal*, VII, p. 2.

tion. The balance of 7,285,301 francs was paid into a special account, henceforth to be known as the "League Building Fund". This account has further been increased by the contributions of the Argentine for the period during which that country was not included in the scale of allocation of expenses. In view of the satisfactory financial position, the Sixth Assembly decided to increase to 11,700,000 francs the credit of 4,500,000 francs voted in 1924 for the building of an Assembly Hall, a figure which the jury of architects had considered insufficient.

SCALE OF ALLOCATION OF THE EXPENSES OF THE LEAGUE FOR 1926, 1927 AND 1928

Country	*Units*	*Country*	*Units*
Abyssinia	2	Italy	60
Albania	1	Japan	60
Argentine	29	Latvia	3
Australia	27	Liberia	1
Austria	8	Lithuania	4
Belgium	18	Luxemburg	1
Bolivia	4	Netherlands	23
Brazil	29	New Zealand	10
Bulgaria	5	Nicaragua	1
Canada	35	Norway	9
Chile	14	Panama	1
China	46	Paraguay	1
Colombia	6	Persia	5
Costa Rica	1	Peru	9
Cuba	9	Poland	32
Czechoslovakia	29	Portugal	6
Denmark	12	Rumania	22
Dominican Republic	1	Salvador	1
Esthonia	3	Serb-Croat-Slovene State	20
Finland	10	Siam	9
France	79	Spain	40
Great Britain	105	South Africa (Union of)	15
Greece	7	Sweden	18
Guatemala	1	Switzerland	17
Haiti	1	Uruguay	7
Honduras	1	Venezuela	5
Hungary	8		
India	56		937
Irish Free State	10		

The unit for 1926 is 24,472.39 Swiss francs, which is $4,643.88 at the rate of 5.1826 Swiss francs per dollar.

Assembly Hall

The Fifth Assembly requested the Council to appoint architects to draw up the conditions of a competition for plans for a new conference hall. The Secretariat is housed in the former Hotel National, situated in grounds of its own on the west lake side. Additional property adjacent was added by gift from the Canton and City of Geneva, making a total site of 13,104 square meters (141,051 square feet). The only hall available for the Assembly is the Hall of the Reformation across the Rhone and on the east lake side, a mile or more away. The Assembly early considered it desirable to have the hall for its meetings more accessible to the Secretariat, where the Council holds its sessions and where all files and other records are centered. In 1923 a resolution in favor of erecting a hall on the land given by the Canton and City of Geneva, known as the Armleder property, was passed.[1] The available site offered perhaps 5,000 square meters (50,382 square feet) for the purpose. The Fifth Assembly passed a resolution looking to the securing of proper plans for the contemplated building.

The international jury of architects for the selection of plans by competition was appointed by the Council[2] in September, 1924, and met for the first time in Geneva January 10–15, 1925. The jury consists of:

Sir John J. Burnet (London); Joseph Hoffmann (Vienna); Victor Horta (Brussels); Charles Lemaresquier (Paris), Karl Moser (Zurich), and Attilio Muggia (Bologna); O. H. Berlage (The Hague); A. Florez Urda Pelleta (Madrid); I. Tenghbom (Swedish).

The jury concluded that the 4,500,000 Swiss francs, provisionally fixed by the Fifth Assembly, seemed insufficient to cover the expense of the proposed building. Although the jury was of opinion that no figure could be definitely fixed until a complete plan had been drawn up, it estimated that, allowing for unforeseen considerations, from seven to eight million francs would be a suitable sum to specify to competitors, and one which would enable the League to be reasonably certain of a satisfactory result.

[1] *Resolutions and Recommendations . . . ,* p. 18.

[2] *Official Journal,* V, p. 1366.

From a purely professional point of view the jury suggested a larger site and one free from the inevitable restrictions imposed by the vicinity of streets. This would allow of the construction of other League buildings around the nucleus of the Assembly Hall.

To the north of the present Secretariat building and across a short dead-end street is a piece of unimproved property with a frontage on the Quai Wilson of 180 meters (580 feet), and extending behind the Parc Mon Repos. The total area is 46,809 square meters (503,842 square feet). Beyond the park lies the new building of the International Labor Office. The opportunity to concentrate the physical plant of the League on such a site was obvious to the Sixth Assembly, which passed the following resolution:

> The Assembly approves the report of its Fourth Committee[1] on the erection of the Assembly Hall and Annexes for the Secretariat, and votes for this purpose a credit of 11,700,000 francs, made up as follows: 8,000,000 for the erection of an Assembly Hall, 2,000,000 for the purchase of the site, and 1,700,000 for the Annex to the present Secretariat building.
>
> The Assembly invites the Council to appoint a committee to report to the Council, should the building at present occupied by the Secretariat be sold within the period[2] and under the conditions laid down in the Fourth Committee's report, whether any changes as regards the selection of the site and the arrangement of the various buildings should be made in the decision adopted in paragraph 1 of the present resolution.

The committee proposed another solution to the north of the park and adjacent to the grounds of the International Labor Office. It has been decided to build on this site which is much larger than the other properties considered. It consists of four properties of a total area of 114,143.9 square meters (1,228,643.5 square feet), for which a total of some 4,000,000 francs is to be paid.

[1] A. 116. 1925. X.

[2] Up to December 15, 1925. No offer meeting the conditions was received at that date.

IV. DEVELOPMENT OF INTERNATIONAL AGREEMENT

[See *Yearbook*, p. 407.]

PROTOCOL FOR PACIFIC SETTLEMENT

[*Yearbook*, p. 480.]

The Protocol for the Pacific Settlement of International Disputes was drawn up by the First and Third Committees of the Fifth Assembly in order to realize the formula "arbitration, security, disarmament." The protocol was signed by the representatives of 18 states, though the Assembly resolution covering it simply recommended its acceptance to "the earnest attention of all the Members of the League." It speedily developed that the British Empire was uncertain as to the wise attitude to assume respecting it. From the signing of the protocol on October 2, 1924, the British policy was the subject of much discussion. At the 33rd session of the Council, Austen Chamberlain, British secretary of state for foreign affairs and British representative on the Council, stated the conclusions of his Government. In the meeting of March 12, 1925, he spoke in part as follows: [1]

His Majesty's Government have given the most anxious consideration to the protocol which was provisionally accepted last October by the Assembly of the League of Nations and submitted by the Council to the various states Members of the League. It is unnecessary to lay stress upon the sympathy felt throughout the British Empire with any effort to improve the international machinery for maintaining the peace of the world. Arbitration, disarmament and security are the main themes of the protocol, and on all these great subjects the British Empire has shown, by deeds as well as words, that it is in the fullest accord with the ideals which have animated the Fifth Assembly of the League. . . .

If, therefore, His Majesty's present advisers, after discussing the subject with the self-governing Dominions and India, see insuperable objections to signing and ratifying the protocol in its present shape, this is not because they feel themselves out of harmony with the purpose which it was intended to serve, or are opposed in principle to schemes for clarify-

[1] *Official Journal*, VI, p. 446–450.

ing the meaning of the Covenant or strengthening its provisions. Amendment and interpretation may in themselves be desirable; but his Majesty's Government can not believe that the protocol as it stands provides the most suitable method of attempting that task.

The declared object of the protocol is to facilitate disarmament, and it proposes to attain this most desirable end: (1) by closing certain gaps in the scheme originally laid down in the Covenant for peaceably settling international disputes, and (2) by sharpening the "sanctions", especially the economic sanctions, by which, under the existing system, aggression is to be discouraged and aggressors coerced. These two portions of the scheme are intimately connected, and it may be desirable on the present occasion to consider them together.

It was, of course, well known to the framers of the Covenant that international differences might conceivably take a form for which their peace-preserving machinery provided no specific remedy; nor could they have doubted that this defect, if defect it was, could in theory be cured by insisting that every dispute should, at some stage or other, be submitted to arbitration. . . .

His Majesty's Government are now more immediately concerned to inquire how far the change in the Covenant effected by the protocol is likely to increase the responsibilities already undertaken by the states Members of the League. On this there may conceivably be two opinions. Some have held that, although in the language of the First Committee "there are numerous fissures in the wall of protection erected by the Covenant round the peace of the world", there is in fact but little danger that through these "fissures" any serious assaults will be attempted. . . .

But this (it need hardly be said) is not the view of the framers of the protocol. They regard themselves as the authors of a "new system" through which alone can be realized "the great ideal to which humanity aspires". The last thing they contemplate is the possibility that their proposals will leave things very much as they stand under the Covenant. And in this His Majesty's Government are entirely of their opinion. . . .

As all the world is aware, the League of Nations, in its present shape, is not the League designed by the framers of the Covenant. They no doubt contemplated, and, as far as they could, provided against, the difficulties that might arise from the noninclusion of a certain number of states within the circle of League membership But they never supposed that, among these states, would be found so many of the most powerful nations in the world; least of all did they foresee that one of them would be the United States of America.

It is no doubt true that there are many points of view from which these unfortunate facts have not proved to be of vital importance. The work of the League goes on, beneficent and full of promise. Though the United

States remains in friendly aloofness, individual Americans have freely helped both by sympathy and service, while the generosity of the American public has greatly aided some causes in which the League is deeply interested. Could, therefore, attention be confined to the present and the past, it might be said with truth that the problems which even a weakened League has had to face have never overstrained its machinery.

The hope may be justified that this good fortune will continue. But surely it is most unwise to add to the liabilities already incurred without taking stock of the degree to which the machinery of the Covenant has been already weakened by the nonmembership of certain great states.[1] For in truth the change, especially as regards the "economic sanctions", amounts to a transformation. The "economic sanction", if simultaneously directed by all the world against a state which is not itself economically self-sufficing, would be a weapon of incalculable power. This, or something not very different from this, was the weapon originally devised by the authors of the Covenant. To them it appeared to be not only bloodless, but cheap, effective and easy to use, in the most improbable event of its use being necessary. But all this is changed by the mere existence of powerful economic communities outside the limits of the League. It might force trade into unaccustomed channels, but it could hardly stop it; and, though the offending state would no doubt suffer, there is no presumption that it would be crushed or even that it would suffer most.

Were this the occasion for entering into a detailed discussion of the subsidiary provisions of the protocol, it would be necessary to dwell at length on all those which, in the opinion of His Majesty's Government, are open to serious objection. But for the purposes of the present communication the following observations may suffice.[2] . . .

It may perhaps be urged that these objections to the protocol, whatever be their value, are far outweighed by the blessings of the disarmament which would immediately follow its acceptance. But why should disarmament immediately follow its acceptance? Why should the new scheme succeed when the old scheme has so lamentably failed? It no

[1] The premier of Canada in a communication of March 10, 1925, referred to the same uncertainty:

"(2) That we do not consider it in the interests of Canada, of the British Empire or of the League itself, to recommend to Parliament adherence to the protocol and particularly to its rigid provisions for application of economic and military sanctions in practically every future war. Among the grounds for this conclusion is the consideration of the effect of the nonparticipation of the United States upon attempts to enforce the sanctions and particularly so in the case of a contiguous country like Canada."

[2] At this point the speaker made detailed criticisms of Arts. 7, 8 and 15 of the protocol, dealing with military action and payment of costs.

doubt claims to have closed some "fissures in the wall of protection erected by the Covenant round the peace of the world." But it is not the possibility of an attack through these (alleged) weak places in the Covenant which haunts the imagination of those who hesitate to disarm. They do not doubt that the Covenant, if kept, would be sufficient to protect them, at least from attack by those who have signed it. What they doubt is whether, when it comes to the point, the Covenant *will* be kept. . . .

After dealing with the situation of member and nonmember states if they should be aggressors and the ultimate dependence of "sanctions" on the plighted word, Mr. Chamberlain concluded:

What expedient remains? How is security and, above all, the feeling of security, to be attained? In answering this question it is necessary to keep in mind the characteristics of the "extreme cases", to which reference has already been made. The brooding fears that keep huge armaments in being have little relation to the ordinary misunderstandings inseparable from international (as from social) life — misunderstandings with which the League is so admirably fitted to deal. They spring from deep-lying causes of hostility which, for historic or other reasons, divide great and powerful states. These fears may be groundless; but if they exist they can not be effectually laid by even the most perfect method of dealing with particular disputes by the machinery of inquiry and arbitration. For what is feared in such cases is not injustice but war — war deliberately undertaken for purposes of conquest or revenge. And, if so, can there be a better way of allaying fears like these than by adopting some scheme which should prove to all the world that such a war would fail?

Since the general provisions of the Covenant can not be stiffened with advantage, and since the "extreme cases" with which the League may have to deal will probably affect certain nations or groups of nations more nearly than others, His Majesty's Government conclude that the best way of dealing with the situation is, with the cooperation of the League, to supplement the Covenant by making special arrangements in order to meet special needs. That these arrangements should be purely defensive in character, that they should be framed in the spirit of the Covenant, working in close harmony with the League and under its guidance, is manifest. And, in the opinion of His Majesty's Government, these objects can best be attained by knitting together the nations most immediately concerned, and whose differences might lead to a renewal of strife, by means of treaties framed with the sole object of maintaining, as between themselves, an unbroken peace. Within its limits no quicker

remedy for our present ills can easily be found or any surer safeguard against future calamities.

That, gentlemen, is the declaration which His Majesty's Government have instructed me to make.

Aristide Briand, spokesman for France, followed with an eloquent address in which he said:

When we are well it is very unpleasant to have to think of illness; but when someone says that war is a case of international pathology, and if it is admitted that the disease is not absolutely incurable, we must also agree that proper physicians and remedies must be found.

That is the secret of the work which the Fifth Assembly accomplished. If war is to be averted, the protocol must find the means. Has it succeeded? That is one of the questions which is raised in the British Government's declaration. At any rate it was earnest and sincere in its attempt to succeed. We must not forget that the Fifth Assembly met in an atmosphere of exceptional solemnity. The attention of the whole world was focussed on its work. A peaceful settlement had just been found for certain material questions, all minds were in harmony, all hearts cherished high hopes. It was said: "Now that certain material anxieties are removed and can no longer give rise to war, we can turn our weapons against war itself; we can declare war on war; we will organize ourselves for that purpose". . . .

Putting a lightning conductor on a house does not produce lightning. I have always regarded a lightning conductor as simply a desirable precaution.

What we attempted to do in the protocol was to provide lightning conductors on all the danger-spots of the building — such conductors as we human beings are capable of putting up to avert the terrible thunderbolt of war. But to say that we have not succeeded is, I think, going too far. Far be it from me to say that what we have created is perfect or that it protects the nations against all possibility of war. If we had been able to do so at one stroke the League's future would indeed be black. The League has a very long career in front of it, and I am sure that it will find many future occasions on which to employ its activities in preventing possible wars. But to say that what has been done is negligible is, I submit, hardly true.

What we are attempting to do is to reach the aggressor, to attempt to define him. But, if this is so, are we not according him an undue advantage? He will take every step to hide his misdeed while the victim will shelter behind the security of the protocol, and when the aggressor

carries his threats into effect the unfortunate victim will be unprepared. That, I submit, is a small error which might well be amended. . . .

One of the greatest features in the protocol is, in the first place, that it does not discriminate between large, small or middle-sized nations. It regards them all as having the same right to security. It seeks to give them that security, irrespective of their size or importance, in order that they may be able to work for peace completely independent and completely united. It was this feature in the protocol which was the determining cause of my country's adherence.

Well, gentlemen, we must not in the future, on the pretext that war is a matter of international pathology, regard ourselves as reduced to such a point of impotence that we have to renounce all possibility of obtaining guaranties among the nations against war.

Another important aspect of the protocol is that it makes war a crime and the party attempting war a criminal. The protocol denounces and pursues both and aims by every means in its power to prevent the recurrence of such crimes.

Is this an impossibility? No; the League of Nations, in view of the nature of the tasks which it has undertaken, and of the time when it has been called upon to undertake them, and in view of the terrible events which brought it into existence, must not be allowed to say to the nations of the world: "War is an abomination and a crime. In society, criminals are prosecuted, the courts try them, the police arrest them and they are cast into prison. There are even means of destroying them, but in the case of war criminals, we are forced to put up with them". Such a thing is not possible. Such an undertaking by the League of Nations must not end in failure; it must not conclude such a series of attempts with a confession of powerlessness. It owes it to itself to continue to encourage the peoples to hope, and only then will war become no longer possible.

The Italian representative retained his faith in the principle on which the protocol was founded. The British proposal to supplement the Covenant by making special defensive arrangements framed in the spirit of the Covenant which "should knit together the nations most immediately concerned" was fully adhered to by him and represented a group of ideas "which were upheld by the Italian delegates . . . in 1923." The Japanese representative stated his Government had not completed its study of the protocol, which, as "an international accord of perhaps highest importance, can not be too thoroughly examined." The Belgian representative with reference to the British proposal said:

I would point out that this is an idea which, ever since the armistice, the Belgian Government has constantly advocated. The idea of special agreements was contained in the mutual assistance scheme drawn up by the Assembly in 1923 and it is found again in the shape of regional agreements in the protocol adopted in 1924.

Pending the time when the study of a general security pact can be taken up again, it should be possible on the lines thus laid down to seek concrete and positive solutions which will stabilize Europe and consolidate peace.

The Brazilian delegate stated:

At the basis of all the motives brought forward by the British Government to support its point of view is to be found the present condition of the League of Nations — the fact that it is not universal. This position, and no one can deny it, makes it difficult to realize to the full the great objects of the Covenant.

The application of sanctions, in view of the present constitution of the League, might, in effect, suffer from the objections which the principle of universal and compulsory arbitration could not alone avoid.

Brazil, as a signatory of the protocol, will never cease to help in the continuous progress of the idea of arbitration and in the ever-increasing consolidation of the authority of the Permanent Court of International Justice.

The Spanish representative asserted that the objections raised against the protocol "have not changed the views nor the underlying motives which guided Spain" in signing the document. The Swedish Government had remitted the protocol to a committee for study and the Swedish representative was consequently not prepared to express its view.

The Uruguayan representative, who had signed the protocol, stated why Latin American nations enjoyed so large a degree of harmony among themselves and why they supported the League:

The Government of Uruguay regards the question of the protocol as one which affects the establishment of peace in the whole world. Incidentally, I would point out that, for my country, as for the majority of South American countries, the problem does not arise in its political aspects, as is the case upon the European Continent, but purely and simply in a moral aspect. It has been possible to realize a condition of peace among ourselves, thanks to our historical traditions and to the

kinship of the South American races. This harmony has enabled us to exclude any germ of hatred from our international relations, but the moral factor has doubtless contributed most effectively to the creation of the sentiment of peace which prevails among the states of South America. This sentiment has been further strengthened and consolidated to a very great extent by the organization of an international legal system with a procedure of conciliation and arbitration, which render extremely remote the possibility of a resort to force in the settlement of any international conflict.

Latin America has cooperated, and will continue to cooperate, with loyalty and enthusiasm in the work of the League of Nations, in the firm hope of seeing the principles of solidarity and international justice, to which I have just alluded, become universal. Such a hope explains our adherence to the protocol which was approved by the Fifth Assembly and which contains, as an essential basis for its various provisions, the principle of compulsory arbitration which no one in South America to-day would think of questioning.

Edvard Beneš, the Czechoslovak foreign minister, spoke for his country and also as rapporteur. As to his country's attitude toward the protocol, which he had done much to bring into existence, he said:

The war destroyed four great empires in Central and Eastern Europe, demolished ancient frontiers, established some ten new states, upset dynasties, unchained social revolutions, destroyed communications and financial systems, put down whole ruling classes and so forth, and produced a most incredible intermingling and incredible cross-currents in the interests of states, nations and classes. The war set nations against each other in this part of the world and created problems of hitherto unknown complexity. From Finland in the north through the Baltic Republics, Poland, Germany, Czechoslovakia and Austria, down the valley of the Danube to Constantinople and southern Greece, you have regions where thousands of conflicts may break out, beginning to-day by the murder of a frontier-guard or the desecration of a flag and easily ending to-morrow in a terrible war.

To-day all these countries are tired of this state of affairs. They long to be at last delivered from this intolerable position. They know that they have many problems that are almost insoluble psychologically through direct negotiations and have wished to find methods other than violence and direct action to solve these problems. In general, they are small nations of whom M. Briand yesterday spoke so eloquently; they

want nothing but peace and security, and that is why the Czechoslovak Government, as one of these nations, insisted so urgently upon the idea of arbitration and the policy of the protocol. If you notice, gentlemen, it is a striking and extremely symptomatic fact that the majority of the signatories of the protocol belong to the states inhabiting this danger zone of Europe.

The Council, on motion of the reporter, halted its own preparations for the armament conference contemplated by the protocol and decided:

(*a*) To refer to the Sixth Assembly the above-mentioned declarations of the representative of the British Empire and the other members of the Council, together with any declarations on the same subject which may be communicated to it by the Governments of the Members of the League, and instructs the Secretary-General to place this question forthwith upon the agenda of the Sixth Assembly;

(*b*) To postpone the work of preparation which it had decided to undertake until the Sixth Assembly has given a decision on the question submitted to it.

As a result of discussions of the First and Third Committees, the Sixth Assembly adopted the following resolutions defining its own attitude and laying down the lines of the future program:

The Assembly,

Taking note of the declarations submitted to the Council and the Assembly of the League of Nations in respect of the Protocol for the Pacific Settlement of International Disputes and of the fact that the said protocol has not up to the present received the ratifications necessary for putting it into operation immediately;

Convinced that the most urgent need of the present time is the re-establishment of mutual confidence between nations;

Declaring afresh that a war of aggression should be regarded as an international crime;

Regards favorably the effort made by certain nations to attain those objects by concluding arbitration conventions and treaties of mutual security conceived in the spirit of the Covenant of the League of Nations and in harmony with the principles of the Protocol (Arbitration, Security, Disarmament);

Records the fact that such agreements need not be restricted to a limited area but may be applied to the whole world;

Recommends that, after these conventions and treaties have been deposited with the League of Nations, the Council should examine them in order to report to the Seventh Assembly on the progress in general security brought about by such agreements;

Undertakes again to work for the establishment of peace by the sure method of arbitration, security and disarmament;

And, in conformity with the spirit of Art. 8 of the Covenant, requests the Council to make a preparatory study with a view to a conference for the reduction and limitation of armaments in order that, as soon as satisfactory conditions have been assured from the point of view of general security as provided for in Resolution XIV of the Third Assembly, the said conference may be convened and a general reduction and limitation of armaments may be realized.

The Assembly,

In view of the importance of making a thorough study of the views which have been expressed in the Assembly and the Council on the subject of pacific settlement of international disputes;

Convinced that such study will contribute to the development of a system of pacific settlement of international disputes:

Requests the Council to submit to careful examination the proposals, declarations and suggestions made at the Assembly and the Council with a view to pacific settlement of international disputes, and to report to the Seventh Assembly upon the progress which can be made in this matter.

The Assembly,

Reserving the question whether it is at present desirable to embody in a new general convention the provisions concerning compulsory arbitration contained in the Protocol for the Pacific Settlement of International Disputes;

Recalling the guarantees provided in the Covenant of the League of Nations:

Calls the attention of states Members of the League to the desirability, from the point of view of their security, of concluding particular conventions for arbitration or for the judicial settlement of disputes.

The Council, on December 12,[1] taking into consideration the resolution of the Sixth Assembly with regard to arbitration, security and the reduction of armaments, invited the Secretary-General to prepare for its next ordinary session (1) a complete statement of all the proposals, declarations and suggestions made

[1] *Official Journal*, VII, p. 170.

at the Sixth Assembly and at the Council meetings with a view to the pacific settlement of international disputes; (2) a systematic survey of the arbitration conventions and treaties of mutual security deposited with the League. The object of these memoranda is to enable the Council to prepare a report for the Seventh Assembly on past and potential progress in these matters.

LOCARNO CONFERENCE

The Sixth Assembly found the position much changed in September from what it was in March. On February 9 the German Government in a memorandum to France had proposed security negotiations which had resulted in a meeting of legal experts of Belgium, France, Great Britain and Germany at London, September 1–4. As a result of the previous exchanges of views and the work of the legal experts, the stage was set for the Locarno negotiations for which the date was fixed during the course of the Sixth Assembly. Enough was known at the time to indicate to the Assembly that the forthcoming conference would register an advance in realizing the principles of arbitration, security and disarmament, while the published correspondence showed that it was the intention, as the British statement in March put it, "to supplement the Covenant by making special arrangements to meet special needs."[1] The Assembly passed resolutions taking cognizance of this situation and calling attention to the proper direction of further progress in the terms of the resolutions quoted above.[2]

The Locarno agreements were initialed on October 16 and signed at London on December 1. According to their terms, they were deposited by Sir Austen Chamberlain and M. Paul-Boncour in the archives of the League of Nations on December 14. The Final Act provides that the Secretary-General of the League shall transmit certified copies to the Governments of the contracting parties. The agreements enter into force as soon as all the ratifications are deposited and Germany becomes a Member of the League of Nations. They remain in force until the Council, at the request of one or other of the contracting parties

[1] See *The Locarno Conference*, this series, IX, p. 15.

[2] *Supra*, p. 181–182.

(notified to the other signatories three months in advance) and voting at least by a two-thirds majority, decides that the League of Nations insures sufficient protection to the contracting parties. Thus the Locarno agreements are closely linked up with the League of Nations. In addition, the fundamental principles of these agreements, the procedure therein initiated and their operation are based on the provisions of the Covenant of the League of Nations, the system of conciliation set up in 1922 by the Third Assembly and the working of the various organs of the League, in particular, of the Council.

Sir Austen Chamberlain (British Empire), secretary of state for foreign affairs, recalling that the documents [1] were to be deposited in the League archives, with their ratifications, said to the Secretary-General:

In handing these documents to you as the representative of the Council, and placing them in the custody of the League, I venture to say that the powers immediately concerned have entered on a new phase of their mutual relations; that, carefully avoiding anything in the nature of provocation or offense to others, they have by mutual agreement guaranteed peace between themselves; that they have thus helped to stabilize the peace of the world and give rest and confidence to our nations; and that, in placing these documents under the guardianship of the League and attributing to the League all the authority which is therein specified, not less than by the agreement come to between Germany and the other nations that as part of those agreements Germany should enter the League of Nations, we have made a contribution which I trust will be acceptable to the League toward the support and increase of its authority and strength.

M. Paul-Boncour (France) deposited the treaties of the French Republic with Poland and Czechoslovakia and continued in the spirit of a telegram from M. Briand which he read as follows:

At the moment when the treaties, which were drawn up at Locarno, are being deposited in the archives of the League of Nations, I desire to associate myself from where I am now detained by the imperious duties

[1] In addition, to the final act and a copy of a letter addressed to the German delegates on December 1, the deposits were the guaranty treaty between Germany, Belgium, France, Great Britain and Italy; a convention between Germany and Belgium; a convention between Germany and France; a treaty between Germany and Poland, and a treaty between Germany and Czechoslovakia.

of my office with the feelings which Sir Austen Chamberlain will express with his full authority. France is proud to have put her signature at the foot of these acts, which record her desire to maintain peace. She sees in the evergrowing authority of the League of Nations and in the enlightened and vigilant action of its Council the best guaranty against war. This work of peace-making performed by the League of Nations, among the members of which we hope soon to welcome Germany, can but be facilitated and strengthened by the conclusion of the treaties of Locarno. These treaties, which are inspired by the provisions and directing principles of the Covenant, are designed to be the beginning, between the states which have signed them, of normal relations based on equal desire to achieve conciliation within the limits of the treaties and of the rights of each party.

The Belgian, Czechoslovak, Japanese, Uruguayan and Brazilian representatives expressed their satisfaction at the ceremony, as did the Spanish representative, who added "that Spain, who has always supported the principle of arbitration, is negotiating at the moment with several powers agreements similar to those of Locarno and inspired by their provisions."

The acting president of the Council, Vittorio Scialoja (Italy), concluded the ceremony:

I am happy that my office as President of the Council allows me to receive to-day, with a solemnity worthy of the act, the text of the treaties known as the treaties of Locarno.

I would have wished to invite the representative of Germany, as well as the representative of Poland, to come to the Council table. I would further remind you that the representative of Germany was the first to initiate the acts of Locarno when he addressed to France a note, which was communicated to Great Britain and to Italy. . . .

As a lawyer, allow me to emphasize the legal side of these treaties. The great difficulty met with in seeking to achieve a friendly settlement of international disputes consists in distinguishing between purely legal cases and cases of a political character, which present far greater difficulties for peaceful settlement because the ordinary means to which recourse is had, such as arbitration or the Permanent Court of International Justice at The Hague, are insufficient to settle questions which are not of a purely legal kind.

We have established an organization at Locarno which at first sight may appear complicated, but which is in fact very simple. The questions which can be settled by a legal procedure are submitted to arbitration

or to the Permanent Court of International Justice. Other questions are sent to conciliation committees which have a wider competence — or rather an unlimited competence. As a final resort, if the conciliation committees are unable to achieve agreement, though we hope that they will always be able to find a way to eliminate causes of dispute, the questions are submitted to the Council, which is specially qualified and established to deal with such matters by the Covenant of the League, but which may perhaps have needed the preparatory organizations which we created at Locarno.

COMMITTEE ON PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW

[*Yearbook*, p. 420.]

The committee of experts appointed in December, 1924, by the Council, in conformity with a resolution of the Fifth Assembly, to study the question of the progressive codification of international law, met from April 1–8 at Geneva with Mr. Hammarskjöld (Sweden) in the chair. In his opening speech, the chairman recalled that international law derived its essential force from a general sense of justice rather than from formal written texts. Although the formulation of law in writing might appear in certain cases to hamper its continuous and organic development, codification on the other hand was obviously of the greatest value in securing certainty and clearness. These advantages were especially valuable in international law. In this domain the facilities for lawmaking could not be compared with those provided by national legislation. The codification of international law, which could never be regarded as complete or final, could only progress slowly and by stages. After passing in review the achievements of authoritative bodies in this domain, such as the Institute of International Law and the International Law Association, Mr. Hammarskjöld pointed out that the task which the committee was called upon to fulfill was not to draw up a code of international law, but to prepare a provisional list of subjects, the regulation of which by international agreement would seem most desirable and realizable. This list, he added, should not consist in a simple enumeration of chapters, but should be sufficiently detailed to enable Governments to decide upon which points efforts for the development of international law should be con-

centrated. The committee was of opinion that the word "codification" should be taken in its widest sense, and that experimental methods should be made use of, without entering into the question of codification in the abstract. The committee will deal with questions of public international law as well as with questions of private international law. Questions relating to war and neutrality were reserved for later examination.

The committee at a second session, held January 12–29, 1926, adopted reports which were transmitted to the Council as subjects of codification in international conventions:

Nationality. Rapporteur: Simon RUNDSTEIN; Vilhena BARBOZA DE MAGALHAES, Walther Max Adrian SCHÜCKING.
Territorial waters. Rapporteur: Walther Max Adrian SCHÜCKING; Vilhena BARBOZA DE MAGALHAES and George W. WICKERSHAM.
Diplomatic privileges and immunities. Rapporteur: Giulio DIENA; Adalbert MASTNY.
Legal status of ships owned by the state and used for trade. Rapporteur: Vilhena BARBOZA DE MAGALHAES; James Leslie BRIERLY.
Responsibility of states for damages suffered within their territories by foreigners. Rapporteur: Gustave GUERRERO; Charles DE VISSCHER and WANG Chung Hui.
Procedure of international conferences and the conclusion and drafting of treaties. Rapporteur: Adalbert MASTNY; Simon RUNDSTEIN.
Suppression of piracy. Rapporteur: M. MATSUDA; WANG Chung Hui.
Prescription. Charles DE VISSCHER.
Exploitation of the produce of the sea. José Léon SUAREZ.
List of subjects of private international law. Rapporteur: James Leslie BRIERLY; Charles DE VISSCHER.

The question of "extradition and criminal jurisdiction of states with regard to crimes perpetrated outside of their territories," on which Mr. Brierly was rapporteur and M. de Visscher a member of the subcommittee, was not recommended as at present ripe for agreement.

The committee continues its work through 10 subcommittees studying the following questions:

1. Is it possible to establish, by means of a general convention, provisions concerning the communication of judicial and extra judicial acts in penal matters, as well as commissions rogatory in penal matters? Subcommission: Messrs. Schücking (rapporteur), Diena.

2. Is it possible to establish, by means of a general convention, provisions concerning the juridical situation of private international associations, without lucrative purpose, as well as private international foundations? Subcommission: Messrs. de Visscher (rapporteur), Rundstein, Wang Chung Hui.

3. Are there questions respecting the conflict of laws relative to domicil whose conventional solution might be contemplated without encountering obstacles of a political character? Eventually, what are these questions and what solutions might be given to them? Subcommission: Messrs. de Magalhaes (rapporteur), Brierly.

4. Is it possible to establish by general convention provisions concerning the juridical situation and the functions of consuls, and, if the answer is affirmative, in what respects? Subcommission: Messrs. Guerrero (rapporteur), Mastny.

5. Is it possible to reach an international agreement to determine, in the absence of special stipulations, the effects of the most-favored-nation clause? Subcommission: Messrs. Wickersham (rapporteur), de Magalhaes.

6. Is it desirable to revise the classification of diplomatic agents as established by the Congresses of Vienna and of Aix-la-Chapelle? In what form should this revision be undertaken? Subcommission: Messrs. Guerrero (rapporteur), Mastny.

7. Is it possible to establish, by means of convention, international rules concerning the competence of courts with respect to foreign states and especially with respect to states engaging in operations of commerce (exception being made of matters already dealt with in the report addressed to the Council of the League of Nations by the Committee of Experts in the course of its second session)? Subcommission: Messrs. Matsuda (rapporteur), Diena, de Visscher.

8. Is it possible, without encountering obstacles of a political or economic character, to formulate by means of a convention international rules concerning the nationality of commercial companies as well as the determination of the state to which they belong with respect to the right of diplomatic protection? Subcommission: Messrs. Rundstein (rapporteur), Guerrero, Schücking.

9. Is it possible to establish, by means of a convention, international rules concerning the recognition of the juridical personality of foreign commercial companies? Subcommission: Messrs. Rundstein (rapporteur), Guerrero, Schücking.

10. Is it possible to establish, by means of a convention, international regulations on the conflict of law, relative to the contract of sale of merchandise? Subcommission: Messrs. Wang Chung Hui (rapporteur), Rundstein, Botella.

The following international associations cooperate with the committee: the Institute of International Law, the American Institute of International Law, the International Law Association, the Institut ibérique de Droit comparé, the Union juridique internationale, the American Society of International Law, the International Maritime Committee and the Société de Législation comparée.

PART II. WORK OF THE LEAGUE OF NATIONS

I. DIRECT RELATIONS OF STATES

1. PACIFIC SETTLEMENT OF DISPUTES

[See also *Yearbook*, p. 424.]

Expulsion of the Œcumenical Patriarch

The Greek Government on February 11 addressed to the Secretary-General a telegram stating that it considered the expulsion from Constantinople by the Turkish authorities of Mgr. Constantin Araboglou, œcumenical patriarch, a serious infringement of the Lausanne agreements regarding the constitution and activities of the patriarchate, of Art. 12 of the convention for the exchange of Greek and Turkish populations, of the Mixed Commission's decision of January 28, 1925, and of the Brussels decisions of October 31, 1924.[1] The Greek Government further appealed in virtue of Art. 11, par. 2, of the Covenant. The Secretary-General forwarded this communication to all Members of the Council and to the Turkish Government.

The Turkish Government in a letter of March 1 requested the Council not to consider the Greek application.[2] It declared that the question of the patriarchate was a purely domestic one for Turkey and that the exchange of Mgr. Constantin was a matter to be dealt with by the Mixed Commission for the Exchange of Populations.

On March 14 the Council heard the Greek representative, M. Caclamanos, who stated that in his opinion the question of the patriarchate was an international one, inasmuch as it had been the object of special agreements at the Conference of Lausanne.

[1] The convention establishing the mixed commission is in *Treaty Series*, XXXII, p. 75. The Brussels decisions laid down certain lines of action for the commission (*Official Journal*, V, p. 1663).

[2] *Official Journal*, VI, p. 579.

As the Turkish Government had raised a legal question which concerned the competence of the Council, the Council decided to ask the Permanent Court of International Justice for an advisory opinion on the following point:

> Do the objections as to the competence of the Council raised by the Turkish Government in its letter of March 1, which is communicated to the Court, preclude the Council from being competent in the matter brought before it by the Greek Government by its telegram to the Secretary-General of the League of Nations dated February 11, 1925? [1]

The Council, on the proposal of Viscount Ishii, expressed its sincere hope that it would be possible for the question at issue to be settled by private negotiation, perhaps with the good offices of the neutral members of the Mixed Commission.

The Greek Government on June 1, informed the Secretary-General that its negotiations with the Turkish Government had been brought to a successful issue and that it desired to withdraw its application of February 11. "The Turkish representative on the Mixed Commission . . . has declared that he withdraws definitely the dossiers relating to the exchangeability of the members of the Holy Synod. The question having therefore been settled, and the Greek patriarch having abdicated, the Holy Synod will proceed with the election of a new patriarch." [2]

On June 8, the Council,[3] after noting this communication, decided, on the report of Viscount Ishii, to remove from its agenda the question of the expulsion of the patriarch. It further decided to inform the Permanent Court that it was no longer necessary for the Council to request an advisory opinion with regard to its competence in the matter.

Frontier between Iraq and Turkey

By Art. 3, par. 2, of the treaty of peace with Turkey signed at Lausanne, July 24, 1923,[4] the frontier between Turkey and Iraq was to be laid down in friendly arrangement between Turkey and Great Britain within nine months; in the event of no agreement being reached within that time the dispute was to be

[1] *Official Journal*, VI, p. 487.
[2] *Ibid.*, VI, p. 895.
[3] *Ibid.*, VI, p. 854.
[4] See *Treaty Series*, XXVIII, p. 17.

referred to the Council of the League. In either case no action was to be taken which might modify the status of the territories involved.

The British Government in a letter dated August 6, 1924, requested that the question be placed on the agenda of the Council. On August 25, the Turkish Government accepted the Council's invitation to take part in its discussions, but stated that it was unwilling to do so until after receipt of a certified copy of the instrument recording the ratifications of the treaty of Lausanne.[1] The Council heard the representatives of Great Britain and Turkey on September 20, 25 and 30, questions of social, economic and military character being raised in the statements of the parties. The Council on the last date, noting that the parties had agreed to accept its decision in advance, set up a special committee of three members to study the available information and to make investigations on the spot. Difficulties respecting the maintenance of the *status quo* arose and the Council at its 31st session at Brussels on October 28 adopted a resolution fixing a provisional line of demarkation pending a final settlement of the frontier.[2]

The Commission of Inquiry was appointed by the Council on October 31, 1924, and consisted of M. af Wirsén, Swedish minister at Bukharest, Paul Teleki, former prime minister of Hungary, and Colonel Paulis, a retired officer of the Belgian Army. They met at Geneva on November 13 and later proceeded to the disputed territory. In April, 1925, they returned to Europe after a tour of investigation to prepare a report to the Council.

The report of the commission was submitted to the Council September, 1925. The report describes the work of the commission, analyzes the geographical, ethnical, historical, economic, strategic and political arguments put forward by the British and Turkish Governments, and gives the conclusions of the commission.

The commission did not confine its investigations to the city of Mosul; it pursued its inquiries throughout the vilayet, in villages, rural districts, and among the nomadic tribes. All classes of the population, the religious authorities, heads of tribes or

[1] *Official Journal*, V, p. 1291.

[2] *Ibid.*, V, p. 1659, map at 1671.

clans and leading merchants and other persons of importance were questioned. As the Turkish and British Governments recognized the necessity of consulting the population of the district, the commission endeavored to obtain the widest and most thorough knowledge of the wishes of the inhabitants.

The commission did not feel able to support the Turkish argument for a plebiscite. The majority of the population, it felt, is not sufficiently advanced for a measure of this kind; for centuries the inhabitants have been swayed by the opinions of their political and religious authorities. So far as the unbiased expression of opinion is at all obtainable, it can only take place through the intermediary of old established authorities or certain well-known persons.

The commission explained the object of its mission in very simple language to the persons who came to meet it, and made its inquiries after the assessors had withdrawn. Witnesses were assured that secrecy would be observed in regard to their evidence. The commission sought the views of the inhabitants with regard to the political status of the territory. The inquiry constituted a psychological study of the population. The questions asked also dealt with economic and commercial problems. The commission visited warehouses, bazaars and markets in different places, particularly in the city of Mosul. It made a special study of ethnological, geographical and geological conditions, as well as of means of communication and agricultural resources.

Its final conclusions are as follows:[1]

Looking at the question entirely from the point of view of the interests of the populations concerned, the commission considers that it would be to some advantage that the disputed area should not be partitioned.

On the basis of this consideration the commission, having assigned a relative value to each of the facts which it has established, is of opinion that important arguments, particularly of an economic and geographical nature, and the sentiments (with all the reservations stated) of the majority of the inhabitants of the territory taken as a whole, operate in favor of the union with Iraq of the whole territory south of the Brussels line, subject to the following conditions:

(1) The territory must remain under the effective mandate of the League of Nations for a period which may be put at 25 years;

[1] *Question of the Frontier between Turkey and Iraq* (C. 400. M. 147. 1925. VII), p. 88.

(2) Regard must be paid to the desires expressed by the Kurds that officials of Kurdish race should be appointed for the administration of their country, the dispensation of justice, and teaching in the schools, and that Kurdish should be the official language of all these services.

The commission is convinced that, if the League of Nations control were to terminate on the expiry of the four-years treaty now in force between Great Britain and Iraq, and if certain guaranties of local administration were not to be given to the Kurds, the majority of the people would have preferred Turkish to Arab sovereignty.

The commission is also convinced that the advantages of the union of the disputed territory with Iraq would in that case be exchanged for very serious political difficulties, and considers that, under those circumstances, it would be more advantageous for the territory to remain under the sovereignty of Turkey, whose internal conditions and external political situation are incomparably more stable than those of Iraq. Whatever decision may be taken, it is essential, however, that Iraq should retain the Diala region, which is necessary for the solution of the irrigation problem.

The commission feels bound to leave it to the Council of the League of Nations to appraise the legal and other political arguments stated in its report, and to decide what relative weight should be given to them as compared with the other arguments. Should the Council, as the outcome of its examination, consider it equitable to partition the disputed territory, the commission would suggest that the best line would be that approximately following the Lesser Zab.

The Council on September 3, 1925, set up a special committee of three members, the Swedish, Spanish and Uruguayan representatives, to "lay before the Council all information and all suggestions which may be of a nature to assist it in reaching a decision." [1] It was the same committee which laid down the Brussels line.

The question of the Iraq frontier was carefully examined by the Council. At several public meetings the representatives of the interested parties, Mr. Amery (secretary of state for the colonies in the British Government) and the Turkish foreign minister, Tevfik Rushdi Bey, explained the views of their Governments with regard to the report, the merits of the case and the procedure to be followed in order to settle the question.

[1] *Official Journal*, VI, p. 1310, 1337, 1434.

Mr. Amery,[1] admitting that until the Council announced its decision the legal sovereignty over the whole area might remain in a strictly technical sense Turkish, said that it was perfectly clear that the Turkish Government, in virtue of Art. 3 of the treaty of Lausanne and of its formal declaration to the Council, had agreed in advance to renounce Turkish sovereignty over all territory beyond the line which the Council might decide upon as the boundary, and that the legal sovereignty, to whatever extent it might be transferred by the decision of the Council, would therefore pass automatically at the moment when the Council gave its decision. Mr. Amery underlined the commission's conviction of the "insuperable practical difficulties of holding a plebiscite" and the statement that it had neglected no means of ascertaining the views of the population. Mr. Amery said that, assuming that the commissioners did not suggest any derogation from the present status of Iraq but only the maintenance of the mandate in the shape of the existing treaty between Iraq and Great Britain, the British Government was prepared, before the expiration in 1928 of the present treaty, to replace it by a treaty of longer duration. He read a telegram from the prime minister of Iraq, stating that the Iraq nation, represented by its Chamber of Deputies, desired to continue in alliance with Great Britain after the expiry of the present treaty.

After giving assurances with regard to the Kurds, Mr. Amery said that to weaken Iraq economically and to give it a strategically indefensible frontier would impose upon the Iraq Government an undertaking entirely beyond its capacity. A partition of the territory as suggested by the commission as an alternative would be an even more serious and permanent danger to the stability of Iraq than the premature withdrawal of British support. Britain had put forward a claim to a moderate extension northward of the provisional Brussels line so as to give the greatest measure of strategical security to Iraq and at the same time enable the remnant of the Assyrian nation to live once again in a substantial portion of its ancestral home. Any less satisfactory frontier would present serious disadvantages, while any impairment of the territorial unity of Iraq would be fraught with the gravest possibilities of disaster to its regeneration.

[1] *Official Journal*, VI, p. 1310.

Tevfik Rushdi Bey[1] stated that, according to the commission, it might be said that the majority of the population would prefer Turkish rule if the question of a prolonged mandate were not introduced. This amounted to saying that, as regards the question raised under the treaty of Lausanne, the population was in favor of Turkey. The Turkish representative underlined the commission's views on the legal aspect of the matter and said that there could be no question of discovering artificial means for making possible the attachment to Iraq of this large and important part of Turkey. It was not a question of knowing whether the British Government would consent or not to insure the stability and development of Iraq, and the Turkish Government was grateful to the commission for the valuable appreciation which it had made of the fact that it was impossible to attach in any normal way the vilayet of Mosul to Iraq.

As Turkey had not recognized the mandatory system in the countries detached from the former Ottoman Empire, how could one speak to her of the establishment of a mandate in a territory which now formed an integral part of her own territory? Turkey had refused categorically to accept the treaty of Sèvres with its articles relating to mandates, the treaty of Lausanne made no allusion whatever to the mandate, and neither at the conference of Lausanne nor during the subsequent phases of the dispute had the question whether it was necessary to establish a mandate over the vilayet of Mosul ever been raised, and the conclusions of the commission should be considered (from the political as well as the juridical point of view) altogether apart from the question of the mandate. Turkey based her demand to keep the contested territory on the ground that it formed an integral part of her country and that its inhabitants demanded the maintenance of Turkish sovereignty.

The British representative laid before the Council reports of deportations of refugees by Turkey. Around these reports developed considerable controversy in and out of the Council.[2]

Between September 4 and 19 the Council committee received a series of notes and memoranda from the parties, and heard verbal statements by their representatives. Certain preliminary questions being raised, the committee proposed that the Council

[1] *Official Journal*, VI, p. 1325–27. [2] *Ibid.*, VI, p. 1436, 1439.

should seek the advisory opinion of the Permanent Court of International Justice on two of the most important points:[1]

1. What is the character of the decision to be taken by the Council in virtue of Art. 3, par. 2 of the treaty of Lausanne? Is it an arbitral award, a recommendation, or a simple mediation?
2. Must the decision be unanimous or may it be taken by a majority? May the representatives of the interested parties take part in the vote?

Mr. Amery agreed that it was essential for the Council to know exactly in what capacity and by what procedure it was to settle the question. He confessed, however, that he thought he was justified in assuming, from the definite and explicit agreement reached at the Council meeting of September, 1924, that there was no doubt whatever as to the character of the decision to be taken, that it was an arbitral decision to be given on the broad merits of the case binding on both parties, and not in any case a mere recommendation or the suggestion of a mediator. On the assumption that there was no doubt with regard to the question of the competence of the Council except in regard to the questions specifically mentioned, he was prepared to fall in with the recommendation of the committee and do his best to facilitate it.

Tevfik Rushdi Bey[2] contended that the proper interpretation of the treaty of Lausanne showed clearly that the two parties resorted to the good offices of the Council and not to a decision given by the Council without their consent. He quoted a statement made by Lord Curzon at the Conference of Lausanne in which he said that the decision of the Council, upon which the Turkish Government would be represented, would have to be unanimous, so that no decision could be arrived at without its consent. He contended that this statement figured in the minutes of the meeting of the conference which resulted in the conclusion of a treaty of peace, and therefore had an altogether special legal significance. The advisory opinion of the Court could not therefore in any way affect the rights of the Turkish Government under the acts of Lausanne or modify the rôle of the Council laid down by those acts. The minutes of the conference, and the stipulations of the Covenant concerning the powers of the Council in those international disputes, which existed on July 24, 1923, were

[1] *Official Journal*, VI, p. 1377. [2] *Ibid.*, VI, p. 1379.

the only records which had any force whatever. The National Assembly of Turkey was not bound by any undertaking except the acts which it had ratified, and any undertaking given by the Government which modified or exceeded stipulations ratified by the Turkish Assembly could not constitute any engagement until that Assembly had approved them. The statements of the Turkish representative at the meeting of the Council in September, 1924, were made in the light of all the past phases of the question including Lord Curzon's speech.

It seemed to Mr. Amery that the Turkish representative had disavowed the assurances given by Fethi Bey to the Council on September 30, 1924, and if that were really the meaning of the Turkish representative, he must make it quite clear that, until the Turkish Government definitely and explicitly renewed its pledge to accept in advance the decision of the Council, any pledge or assurance the British Government had given either through Lord Parmoor or through himself fell to the ground.

The Council, in adopting the resolution referring to the Permanent Court the two questions mentioned above, reminded the parties of the engagement to maintain the *status quo* which they had entered into when signing the treaty of Lausanne, and which they had renewed in 1924 before the Council.

At the request of the British Government the Council, in order to avoid the serious situation which might result from the spread of news concerning local incidents, sometimes difficult to verify, and thus better to insure the maintenance of the *status quo* during the period of delay involved by reference to the Court, decided to send to the spot a representative of the League of Nations. On September 28, the Council appointed General Laidoner (Esthonia) as representative of the League for purposes of information on the situation at the provisional Iraq-Turkish frontier as laid down at the Brussels Council meeting of October 29, 1924.[1] For Great Britain and Iraq the assurance was given that every facility would be given for carrying out the task. Tevfik Rushdi Bey said:

The disputed territory is definitely limited from our point of view, and in the disputed territory I agree that the fullest inquiry possible should be carried out. North of the Brussels line the question becomes one of

[1] *Official Journal*, VI, p. 1383, 1386, 1405.

minorities, and I am ready to discuss that question also, apart from the other, in the manner I have already indicated.

I wish, on the other hand, to make it clear that, so long as a minorities question is not raised in the regular manner, I have not the right or the necessary powers to discuss matters in regard to the territory to the north of the Brussels line.

The opinion of the Court was delivered on November 21. It did not define the "decision to be taken" either as an arbitral award, recommendation or mediation, but made it clear that it "will be binding on the parties and will constitute a definitive determination of the frontier between Turkey and Iraq." As to the second question the opinion was:

(2) that the "decision to be taken" must be taken by a unanimous vote, the representatives of the parties taking part in the voting, but their votes not being counted in ascertaining whether there is unanimity.[1]

On December 8 the Council took note of the advisory opinion of the Permanent Court, and heard statements by the representatives of the interested parties. The British representatives recalled that, under the terms of the Lausanne treaty, his Government had always regarded itself as bound in advance by the decision of the Council. The Turkish representative, on the other hand, declared that he was unable to accept an interpretation of Art. 3, par. 2, of the treaty other than that given by the Grand National Assembly of Turkey, when ratifying the treaty. In his view, the Court's opinion could only be adopted by the Council voting unanimously, including the representatives of the parties. The Council, rejecting this argument, decided unanimously, the votes of the parties not being counted, to adopt the opinion of the Court. The Turkish representative, who had voted against this resolution, then announced that, in accordance with his instructions, the powers of his delegation ceased to be valid in the case of arbitration, which he had insisted was the character of a binding decision.

At the end of the meeting of December 8, the Swedish representative pointed out that the Council, while adopting the advisory opinion of the Court, by no means intended to renounce its duties

[1] Publications of the Permanent Court of International Justice, Series B, No. 12, p. 33.

as mediator. The president said that the Council committee, composed of M. Unden, M. Quiñones de Léon and M. Guani, would continue its work. Negotiations were conducted by the committee of three, acting on behalf of the Council, and the Turkish delegation. None of these suggestions offered by either side seemed to the committee to constitute a starting point for further mediation with a view to a friendly settlement. In its report to the Council, the committee describes as follows its action with a view to mediation:

> The Council has never lost sight of the possibility of reaching an equitable agreement between the parties; it has accordingly listened on many occasions to the arguments of the representatives and instructed the commission of inquiry to furnish it with all useful information and suggestions. The Council has not thought fit itself to formulate proposals; such proposals should have been made by the parties themselves with a view to a compromise, and even so the Council could not act as mediator if the divergence between the proposals were so wide as to exclude all hope of conciliation.
>
> Moreover, the Council was bound to maintain its absolute right to take a decision — a right of which it would avail itself if necessary. In the absence, therefore, of conditions making it possible to reach a friendly solution, the Council finds itself obliged to use the power conferred on it by the treaty.

The Council read its decision on December 16. At the beginning of this meeting, to which Turkey had not sent a representative, the president read to the Council a declaration of the Turkish representative, Tevfik Rushdi Bey, according to which the sovereign rights of a state over a territory could only come to end with its consent, and that therefore Turkey's rights over the whole of the Mosul vilayet remained intact.

The decision of the Council was based on the report of the commission of inquiry, the committee of three having recognized that an equitable solution of the dispute could only be found in following the main lines of the final conclusions of this report. The advantages and disadvantages of each of the solutions indicated were carefully weighed.

After all arguments and factors had been taken into consideration, the solution best adapted to settle the question appeared to the Council to be the allocation to Iraq of all the territory south

of the Brussels line. The British Government was invited to submit a new treaty with Iraq, insuring the continuation for 25 years of the mandatory régime, unless Iraq became a member of the League at an earlier date. As soon as, within six months, the Council is notified of the execution of this stipulation, it will pronounce its decision final, and indicate measures to insure the delimitation on the ground of the frontier line.

The British Government, as Mandatory, will lay before the Council the measures to be taken with a view to securing for the Kurdish population the guaranties of local administration recommended by the commission. The British Government was also invited to act, as far as possible in accordance with the other suggestions of the commission of inquiry as regards measures likely to insure pacification and to afford equal protection to all elements of the population, and also as regards the commercial measures indicated by the commission.

In September the Council decided, at the request of the British Government, to dispatch a representative to the Mosul district, in order to insure the maintenance of the *status quo* pending the proceedings of the Permanent Court of International Justice. The representative chosen was General Laidoner (Esthonian), who submitted his report on December 10. The investigation was confined to the district south of the provisional frontier, as the Turkish Government had not agreed to an inquiry into conditions north of the line. According to General Laidoner's report, most of the incidents in the neighborhood of the line were ordinary frontier incidents, inevitable so long as the frontier question had not been settled and the boundary marked out on the spot. The question of deportations was, General Laidoner said, infinitely more important. These operations were causing "fairly serious and easily comprehensible agitation and nervousness." The evidence gathered by General Laidoner showed that grave acts of violence had taken place.

The Bulgaro-Greek Incident

On October 22, 1925, the Bulgarian minister for foreign affairs telegraphed [1] to the Secretary-General of the League that at 3 P.M. of the 19th a Greek soldier had "crossed the frontier and fired

[1] *Official Journal*, VI, p. 1696.

on the Bulgarian sentry at the post of Demir-Kapu on Mount Belassitza. The Bulgarian sentry replied and killed the attacker, who fell in Bulgarian territory, whereupon a Greek detachment, under orders from the post concerned, advanced into Bulgarian territory to remove the body." The Bulgarians, the foreign minister stated, insisted on the usual inquiries and the ensuing firing lasted till the evening of the 20th. Bulgaria proposed to the Athens Government that an inquiry be held by a mixed commission to establish responsibilities. "Before replying to our proposal, the Greek Government ordered Greek troops to advance into our territory," and this advance continued until the 21st to a depth of 8 kilometers, the movement being accompanied by artillery fire and airplane bombing. The minister continued:

> Bulgarian Government protests with all possible vehemence against the flagrant invasion of territory of a country well known to be disarmed by the army of a country Member of the League of Nations, which thus infringes its fundamental obligations, and, in virtue of Arts. 10 and 11 of the Covenant of the League, the Bulgarian Government requests you to convene the Council without delay to take the necessary steps.

This telegram was received by the Secretary-General on the morning of the 23rd. The appeal being under the first paragraph of Art. 11, it was his duty to "forthwith summon a meeting of the Council." This he did within an hour by telephoning to Aristide Briand, president of the Council during its last session, who, according to custom, retained that position until his successor in alphabetical rotation took his place at the next regular Council meeting. M. Briand by telegram immediately announced to Bulgaria and Greece the action of the Secretary-General and, in behalf of his colleagues, reminded both Governments of the "solemn obligations undertaken by them as Members of the League of Nations under Art. 12 of the Covenant not to resort to war and of grave consequences which the Covenant lays down for breaches thereof. I therefore exhort the two Governments to give immediate instructions that, pending consideration dispute by Council, not only no further military movements shall be undertaken but that troops shall at once retire behind their respective frontiers."

The Bulgarian Government issued to its troops on the 24th an order to make only slight resistance "in view of the fact that the incident has been laid before the Council of the League." The war ministry also ordered that, "should the Greeks attack, our troops will abstain from all resistance."[1] On the 24th Bulgaria telegraphed that it was maintaining the "strictest orders to the Bulgarian troops to take no action which might make the situation worse." It asserted no invasion of Greek territory had occurred and that Greek bombardment of Bulgarian territory continued.

The Greek minister for foreign affairs on the 24th telegraphed "that the Bulgarian version is in contradiction with the actual facts." The firing was opened on the Bulgarian side. Greece "has had to allow its military command" to take measures for defense and to free its territory, "certain points of which are at this moment still occupied by Bulgarian regular troops." The enemy's fire still continued. "As soon as we are able to reoccupy our posts and free the whole of our territory, our troops will withdraw on to our frontier lines." Therefore, "all the measures which the military command has been compelled to take are nothing but measures of legitimate defense and could not be considered as hostile acts" under Art. 12. But, "the Greek Government, strong and confident in the justice of its cause and in deference to the League of Nations, will none the less accept the competence of the Council."[2]

The Council met at Paris on October 26 at 6 P.M., one member arriving then only by airplane. M. Briand as president proposed to his colleagues that the representatives of Bulgaria and Greece first be asked to reply to the following question: "What action is being taken on the recommendation of the acting president of the Council with regard to the cessation of hostilities and the withdrawal of troops and what is the present situation?" This being agreed to, M. Marfoff for Bulgaria spoke:

> I declare in the clearest possible manner that at no moment and at no point has Greek territory been invaded or occupied by the Bulgarians. . . . We should be quite prepared to comply with the request . . . , but we have never crossed the frontier.

[1] *Commission of Enquiry . . . Report*, p. 7 (C. 727. 1925. VII).

[2] *Official Journal*, VI, p. 1697.

Alexander Carapanos for Greece followed:

I have to state that the Greek Government agrees without hesitation to comply with the invitation of the president of the Council to evacuate Bulgarian soil as soon as the Bulgarians have quitted Greek territory.[1]

In opening the proceedings the president of the Council called attention to the existence of two questions. Time and care must be taken in ascertaining the facts and responsibilities. The cessation of hostilities and evacuation of foreign territory were urgent. The question put to the representatives of the disputants was directed at the second problem, and their answers plainly did not supply a satisfactory answer.

Though it might have done otherwise under Art. 11 of the Covenant, the Council sought an answer through its customary conciliatory procedure. It declared a private session, that is, the public was asked to retire. Then, the president hoped "that the representatives of Bulgaria and Greece would permit" the Council, exclusive of the disputants, "to consider the matter among themselves." The two "then retired." After an exchange of views between the members of the normal Council, they "invited the representatives of Bulgaria and Greece to return to a private meeting of the Council, at which a draft resolution . . . was approved." The vote was unanimous, including the Bulgarian and Greek representatives. In the public meeting immediately afterward, the Bulgarian representative declared "that his Government was ready to comply with the decision," while his Greek colleague "had no objection to bring forward." His Government "would, he was convinced, comply with" the terms. The Council then adopted the resolution unanimously, Bulgaria and Greece both voting.

The significant part of the resolution thus accepted reads:

The Council is not satisfied that military operations have ceased and that the troops have been withdrawn behind the national frontiers.

It therefore requests the representatives of the two states to inform it within 24 hours that the Bulgarian and Greek Governments have given unconditional orders to their troops to withdraw behind their respective national frontiers. and within 60 hours that all troops have been with-

[1] *Official Journal*, VI, p. 1699.

drawn within the national frontiers; that all hostilities have ceased and that all troops have been warned that the resumption of firing will be visited with severe punishments.[1]

The Council also requested the French, British and Italian Governments to direct officers within reach to repair immediately to the region where the conflict had broken out, and to report direct to the Council on the execution of its decision.

The Bulgarian and Greek Governments were notified of these decisions telegraphically, the period fixed by the Council for the execution of its decision beginning at 8 P.M., October 26.

The following morning the Council meeting began with the Greek representative reading a telegram from Athens in which the foreign minister reported a mediatory proposal by the Rumanian minister. M. Carapanos concluded that "there was an agreement between Bulgaria and Greece reached as a result of the intervention of Rumania." [2]

"The Council," replied the president, "had always endeavored, as its procedure required, to bring about a pacific settlement of disputes of this nature by the good will of its members and by means of conciliation. If the parties themselves came to an agreement in a satisfactory manner, if the hostilities ceased and if the troops were withdrawn behind their respective frontiers, the Council would be happy to note such a position of facts, but that was in fact the whole problem." He understood rifle firing continued, meanwhile the Council would be glad to hear the representatives of Bulgaria and Greece.

Messrs. Marfoff and Carapanos for the two countries made lengthy and detailed statements of the facts as the Bulgarian and Greek Governments saw them. These statements showed wide divergencies of view.

The Bulgarian representative declared that his Government, as soon as it had received news of the incident, had proposed that a mixed commission of inquiry should be appointed. At no time and on no point had Greek territory been occupied by Bulgarian troops and that it was not possible to speak of an aggression on the part of Bulgaria. He recalled that Arts. 10, 11, 12 and 15 of the Covenant absolutely precluded the use of force by the

[1] *Official Journal*, VI, p. 1699–1700. [2] *Ibid.*, VI, p. 1701.

Members of the League, and that Bulgaria, in virtue of the treaty of Neuilly, was a disarmed country, the provisions of this treaty having been faithfully carried out. The Bulgarian representative demanded an investigation and reparation for damages. He also requested that the Bulgarians taken prisoners by the Greeks should be set free.

The Greek representative said that the measures taken by his Government were necessary for the defense of Greek territory. The Greek advance only took place after the violation of Greek territory by Bulgarians, and had technically a defensive character. He asserted that the Bulgarian proposal for an inquiry had only been made after the Bulgarian troops had been beaten. He ascribed the various incidents to the activity of the comitadji organizations, and to the fact that the Bulgarian Government had not been able to enforce the application of the military clauses of the treaty of Neuilly. He requested the Council to investigate the local causes which had led to the incident, in particular the existence of a Bulgarian army corps ready to take the field on any occasion. The Bulgarian representative said that his Government consented to the question of the comitadjis being elucidated in the course of the inquiry.[1]

Meantime the resolution of October 26 was being carried out. On the morning of the 28th the Bulgarian representative informed the Council that strict orders had been given to Bulgarian troops to abstain from all military action; and to the Bulgarian military command to withdraw any Bulgarian troops which might be on Greek territory. M. Carapanos said that the Greek Government had, on receipt of the Council's decision, repeated and confirmed instructions previously given with a view to the cessation of hostilities and the withdrawal of its troops. The first part of the Council's decision had therefore been executed.

As regards the execution of these orders, for the cessation of hostilities and for the evacuation of occupied territory, the Greek Government on October 29 informed the Council that it was neglecting no steps to insure that the Bulgarian territory would be evacuated by the time fixed. This information was confirmed the same day by a report from the British, French and Italian military attachés at Belgrade, who had arrived at the scene of

[1] *Official Journal*, VI, p. 1709.

action. The Council was notified later by telegrams from the attachés and from the Greek minister of foreign affairs that the Greek troops had entirely evacuated Bulgarian territory on October 28 at midnight, that is to say, eight hours before the time limit fixed by the Council, and that the evacuation had given rise to no incident of any kind.

The statements of the Bulgarian and Greek representatives on October 27 had emphasized underlying conditions from which the incident grew, while the allegations made directed attention to the responsibility of the parties, and the demands for reparation brought the merits of the action before the Council. That accordingly directed its inquiry to the deeper causes of the dispute as soon as possible. On October 27, the Greek representative, in raising the general question for his Government, had said: "I must declare on its behalf that it will accept in advance the decision of the Council."[1] An equivalent engagement was given by Bulgaria on October 29.

To this end, the Council decided on October 29 to appoint a commission to proceed to a thorough investigation of the incidents which had arisen on the Bulgaro-Greek frontier to the northeast of Salonika. The terms of the commission shall in particular establish the facts enabling the responsibility to be fixed, and supply the necessary material for the determination of any indemnities or reparation which may be considered appropriate. Further, in order that the Council may be in a position to make suitable recommendations to the Governments concerned, the commission is requested to submit to the Council, either in the report referred to above, or subsequently any suggestions as to measures which, in its opinion, would eliminate the general causes of such incidents and prevent their recurrence.

The representatives of both parties accepted this decision and gave formal assurances that any prisoners who might have been captured by their troops should be at once set free and transferred, at the expense of the Government having captured them, to their national territory, and that any movable property, cattle, etc., that might have been seized should be forthwith restored, or, if that was not possible, that suitable compensation should be made, the figure to be fixed eventually by the commission.

[1] *Official Journal*, VI, p. 1706.

The commission met for the first time on November 6 at Geneva and left on November 7 for Belgrade, where it conferred with the British, French, and Italian military attachés, who had continued to follow the situation. From Belgrade the commission proceeded to the scene of the incident to pursue its inquiry, which was followed by investigations at Athens and Sofia, conducted in agreement with the Greek and Bulgarian Governments. On its return to Belgrade, the commission addressed its report, for observations, to the two Governments concerned.[1]

The report[2] gives a detailed account of the events at Demir-Kapu and the Greek action in Bulgarian territory. This history brings out many essential bits of information not available to the Council at the time its decision was taken and the whole account illustrates the diverse understanding of events by the parties to the incident. The commission utilized the statements submitted to the Council by the Greek and Bulgarian Governments, the subsequent letters modifying these statements, the inquiries conducted on the spot by the military attachés in cooperation with Greek and Bulgarian officers, who had either been witnesses of the incident or personally concerned therein, and the statements made in the course of further examinations conducted by the commission with a view to clearing up certain points which remained doubtful. From all this evidence the commission was able to describe the probable course of events and explained why such incidents are of frequent and almost inevitable occurrence, owing to conditions of life and the defective organization of the frontier guards.

The report relates the circumstances in which the news from Demir-Kapu was received in Athens and the effect it produced on the Greek Government:[3]

The Demir-Kapu affair was really nothing more than a frontier incident which could, and should, have been quickly settled on the spot. The false news of a Bulgarian attack with a battalion — news which was

[1] The commission consisted of Sir Horace Rumbold, British ambassador at Madrid; General Serrigny of the French army; General Ferrario of the Italian army; M. de Adlercreutz, Swedish minister at The Hague; M. Droogleever Fortuyn, member of the Netherlands Parliament.

[2] *Commission of Enquiry . . . Report* (C. 727. 1925. VII).

[3] *Report*, p. 7.

forwarded unverified by subordinates and distorted by some of them, and was rather too readily accepted by the Greek General Staff on October 20 — greatly complicated the matter. . . . The Greek command really feared an invasion in force of its territory; but as soon as the situation at Demir-Kapu became stable, the Greek Government should have been satisfied with securing the other frontier passes, and should not have entered Bulgarian territory. . . . The frontier line gave them an entirely adequate covering position. There can be no question of premeditation on either side.

. . . The commission is of opinion that the operations carried out by the Greek troops were not technically justified.

As to responsibilities and indemnities, the conclusions drawn by the commission are as follows:

1. The Greek Government's claim to an indemnity must be rejected except as regards the claim on account of Captain Vassiliadis, who was killed while advancing under the white flag.

2. The Greek Government is responsible for the expenses, losses and suffering caused to the Bulgarian people and Government by the invasion of Greek troops, and on this account owes reparation to Bulgaria.

The commission classifies as follows the damages incurred by Bulgaria:

1. Loss in movable property (furniture, cattle, grain and tools). On this account the commission considers that the Greek Government should pay to the Bulgarian Government an indemnity of 20,000,000 levas.

2. (*a*) Losses in killed and wounded (12 killed, 19 wounded, without counting militia men killed or wounded and the cost of maintenance of militia men, the commission being of opinion that the levy of the inhabitants of these frontier regions is contrary to the treaty of Neuilly); (*b*) material and moral damages (loss of working days caused by the invasion).

The commission assessed damages under these heads at 10,000,000 levas. In fixing this figure, account was taken of the death of Captain Vassiliadis.

The last chapter of the report is devoted to general historical considerations and a brief outline of the various problems to be dealt with, such as refugees, the revolutionary Macedonian Committee and the comitadjis. It recommends:

(*a*) The reorganization of the frontier guards and the maintenance of posts at a greater distance from the frontier than hitherto. The attachment to the military authorities concerned of neutral officers to insure the execution of these measures on parallel lines in both countries.

(*b*) The establishment, if necessary, of a conciliation commission composed of a Greek officer, a Bulgarian officer, the two neutral officers and a chairman (to be selected from among members of organizations working in the Balkans which are attached to or in relation with the League).

(*c*) The report points out that the suspension of operations took place in exceptionally propitious circumstances. Bulgaria's appeal reached Geneva in the morning of October 23. Thanks to an excellent telephone service between Geneva and Paris, the president of the Council was able by 1 P.M. to dispatch to both Governments an urgent request to suspend operations. On the scene of the incident a battle was imminent. The Greek Government had ordered its troops to attack Petrich at 8.30 A.M. of the 24th. There were sufficient forces on both sides to make serious consequences probable. The Greeks had 1,000 men and three batteries, the Bulgarians about one battalion and twelve guns, occupying a defensive position. The Bulgarian commander had orders to offer some measure of resistance. The order to suspend operations dispatched from Athens on the arrival of the telegram from the president of the Council reached the scene of action at 6 A.M., — *exactly two hours and a half before the attack was timed to begin.* In order to enable the League to act with the utmost rapidity, it is recommended that "special facilities for communication and transit be granted to Governments and the League Secretariat in case of a threat of war. In particular the use of wireless telegraphy and priority messages might be considered."

The commission expresses its views as to the necessity, in the interest of both countries of eliminating two principal sources of discontent. It suggests in the first place, that the liquidation of property taking place under the convention on the exchange of populations should proceed more rapidly and that vexatious measures should be avoided. In the second place the commission points out that there are in Bulgaria many refugees of Bulgarian origin who have arrived at different times from Greece, where

they left property. Under the minorities treaty these persons are entitled to return to Greece. Greece, however, under the pressure of circumstances has used land belonging to them to settle refugees from Asia Minor. The commission recommends that the Greek Government should offer compensation for their land to persons renouncing their right to return to Greece.

The report came before the Council at the first meeting of the 37th session on December 7. At that time M. Kalfoff for Bulgaria and Constantin Rentis of Greece made statements on behalf of their Governments, answering each other at the second meeting, when both summarized their suggestions as to details of the report. Sir Austen Chamberlain, the British representative, who had acted as rapporteur up to that point, then requested the assistance of his colleagues in preparing the Council's report, "so that the whole responsibility of preparing this report should not rest upon his shoulders," in view of "the consequences which the decision of the Council might have for what might be called the jurisprudence of the League." Viscount Ishii of Japan and Paul Hymans of Belgium were designated to assist.

On December 14 the Council noted that the commission had fixed 20,000,000 levas ($140,000) as the amount of compensation to be paid by Greece to Bulgaria in respect of movable property. It further decided, on the recommendation of the commission, that the Greek Government should be requested to pay Bulgaria a sum of 10,000,000 levas ($70,000) as reparation for material and moral damage. Both sums the Council considered should be paid within two months, and it asked to be advised when payment was effected.[1] Sir Austen Chamberlain (rapporteur) said:

> The fact that the Greek Government acted without premeditation, under the impression produced by information received from the frontier post and exaggerated in transmission to Athens, has not escaped our attention. But, even if this information had been accurate, the Greek Government would not have been justified in directing the military operations which it caused to be undertaken. . . .
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> . . . We believe that all the members of the Council will share our view in favor of the broad principle that where territory is violated without sufficient cause reparation is due, even if at the time of the occurrence

[1] The sum of 15,000,000 levas ($105,000) was paid on February 15, 1926, and an equal amount on March 1.

it was believed by the party committing the act of violation that circumstances justified the action. We believe this to be a principle which all members of the League of Nations will wish to uphold and which both Bulgaria and Greece would wish to support, even if they had not already accepted in advance, as in fact they did explicitly accept at Paris, whatever decision the Council might reach on this point.

As to the improved régime in the Bulgaro-Greek border territories the Council report as adopted said:

As regards the measures to prevent frontier incidents, there is one point upon which both Governments desire to make a modification. They prefer that the frontier guard should remain under the Ministry of War rather than, as was recommended by the commission, that it should be placed under the civilian authority. We propose to the Council that, with this exception, it should recommend to the two parties the measures of military reorganization on the frontier proposed by the commission.

As regards measures to limit the effects of incidents — measures which contemplate *inter alia* the appointment of a neutral officer on each side to assist in the reorganization of the frontier guard — the parties are again in agreement on a slight modification on the original proposal of the commission. This should now read as follows:

"Should there arise incidents on the frontier, (1) the junior Greek and Bulgarian officers in command at the locality should be under obligation to meet as soon as possible at a post near to the scene of the incident; the posts at which such meeting should take place should be fixed according to a prearranged agreement come to between the two parties.

"(2) In any case, whatever might be the result of the meeting described above, the senior officers commanding the sectors on either side of the frontier should meet within a maximum delay of 24 hours at a point previously agreed upon by them. There is no doubt that this obligation to meet and talk the matter over would have the effect of gradually easing the situation.

"Experience has shown, however, that attempts to settle frontier incidents by direct conciliation on the spot between the two parties concerned in the dispute frequently fail owing to the natural excitement prevailing at the moment.

"The presence of neutral officers of the same nationality, would be likely to add greatly to the chances of success of such negotiations. It is even permissible to suppose that, through them, most incidents would be settled without any difficulty at all. At the same time, there may be

cases in which, in spite of everything, agreement could not be reached. To provide for such emergencies, the commission proposes that a conciliation commission should be established with the least possible delay, consisting of representatives of the two parties, that is to say, an officer belonging to the frontier guards on either side and the neutral officers; this commission would be presided over by a third person chosen in advance, whose appointment would be permanent. It would be necessary, in order to allow the commission to meet without delay, that he should be selected from among persons belonging to organizations working in the Balkans which are attached to or have relations with the League of Nations.

"When the neutral officers have completed their mission, that is after the two years recommended by the commission, the obligation of the junior officers and the commanders of sectors to meet in case of incidents would be maintained. If no agreement could be reached by this means, the dispute would be referred for arbitration to a representative of the League of Nations, selected in the manner provided in the previous paragraph for the presidency of the conciliation commission."

We propose that the Council should recommend this procedure to the two Governments concerned.[1] . . .

(3) . . . The Council will be glad to learn that both Governments have expressed their desire to hasten the liquidation of property of those persons who have taken advantage of the convention of voluntary emigration between the two countries, signed at Neuilly-sur-Seine, November 27, 1919,[2] and to put an end to all vexatious measures. We advise that the Council should recommend the Bulgarian and Greek Governments to keep it informed of the progress achieved in this important work.

The other political recommendation made by the commission is of fundamental importance. It will be remembered that at the meeting of the Council on October 28, the Acting President of the Council noted "that the representatives of Greece and Bulgaria in fact desired the Council to direct its inquiry to the deeper causes of the dispute, and more particularly to the question of the Bulgarian comitadjis. The Bulgarian Government would, of course, desire that the question should be examined in its full extent, and this was also the feeling of the Greek Government." The representatives of both Governments agreed to this interpretation. The Council will be grateful to the commission of inquiry for having made a serious investigation into the general causes of friction on the frontier between the two countries in the short time available to

[1] Swedish officers, Lieut. Col. Siefvert and Lieut. Col. Lindh, were appointed as the neutrals.

[2] League of Nations, *Treaty Series*, I, p. 68.

them for such an inquiry. The commission states that during the last 50 years, as a result of successive wars, drastic alterations of frontiers have involved frequent changes of nationality for the inhabitants of the districts in question, with the usual train of attendant misfortunes, resulting in many cases in sudden mass emigrations. These populations, the commission states, which are comparatively backward, have been worked upon by contradictory propaganda, which has led them to mistrust one another and to seek to do each other injury. To-day the respective populations of Bulgaria and Greece have become comparatively homogeneous but at the price of unquestionable sufferings. These sufferings have implanted feelings of hatred, which can not be expected to disappear quickly in view of the fact that the means at the disposal of the Governments are unfortunately too limited to allow them to devise and execute measures of relief and remedies on the large scale required.

Nevertheless, the commission considers that there are certain measures of a comparatively modest nature which it may be hoped are within the power of the Governments and which, granted real good will, might shorten the period of friction and prepare for better times.

The commission reports that there are in Bulgaria a considerable number of refugees of Bulgarian race who came from Greece at different periods and have been unwilling to avail themselves of the convention on voluntary emigration, which is referred to above, although they were entitled to do so. On the other hand, these refugees claim the rights conferred by the treaty between the Principal Allied Powers and Greece concerning the treatment of minorities, signed at Sèvres on August 10, 1920.[1] According to Arts. 3 and 4 of this treaty natives of districts now incorporated in Greece have the right to return there even if they left those districts many years ago, and in any case they are entitled to retain their real property in those districts. The number of those persons at present in Bulgaria is considerable. Most of them have left property in Greece for which they have received no compensation, and, under the pressure of circumstances, the Greek Government has employed this land to settle the Greek refugees from Turkey. To oust these refugees now in order to permit of the return of the former owners would be impossible, nor would such a proceeding be desirable, for its consequence would be to recreate in Greece minorities which events have caused to disappear.

Nevertheless, in the view of the commission, if these Bulgarians are to be asked to give up a right, it is only just that they should be compensated for the value of the property they left behind them. The value of this property will undoubtedly be very difficult to estimate in view of

[1] League of Nations, *Treaty Series*, XXVIII, p. 243.

the considerable period which has elapsed since the departure of most of the owners. In the interests of reconciliation between the two nations the Greek Government should, nevertheless, display special good will in this respect. The commission considers that these problems could be solved either by extending in favor of the persons in question the time limit provided for making a declaration of emigration under the convention for voluntary emigration, or by the signature of a special protocol between the two Governments.[1]

In this way the Bulgarians who did not see fit to avail themselves of the right, which has now lapsed, of emigrating under the convention might be led to renounce their Greek nationality receiving in return for the rights conferred on them by the minorities treaty the value of their property calculated on a liberal scale. The Macedonian Revolutionary Committee's influence would decrease as it found fewer and fewer grievances and sufferings to exploit among the refugees in Bulgaria. The Greek population settled near the frontiers would have less to fear from comitadjis and from the rancor of the Bulgarian population whose place they have taken.

It is in the above terms that the commission has explained its purpose in putting forward this recommendation. We consider that the commission has rendered a great service to both countries in setting forth so clearly this serious cause of disagreement, and that the Council should support with all its authority this recommendation. We are glad to be able to state that the Greek representative informed us that his Government was prepared to extend the time limit for making declarations of emigration under the convention of voluntary emigration in the case of those persons of Bulgarian race now in Bulgaria who have the right under the minority treaty to consider themselves as Greek subjects and therefore to return to Greece and retain their real property in that country whether they return or not. The extension of the time limit would naturally apply only to the above category of persons. We are of opinion that the Council should urge the Greek Government on the one hand to take all possible measures to give satisfaction to the refugees in question, and the Bulgarian Government, on the other hand, to use all its influence with the persons covered by the clauses in the minorities treaty to accept compensation in return for the surrender of their rights. It should be clearly understood that no other questions, however closely connected they may be thought to be, should be allowed to confuse this issue. The problem as defined by the commission is difficult enough in itself. Its successful solution would bring about a very real improvement in the relations between the two countries. We propose that the two Govern-

[1] For a previous attempt to reach the same problem, see *Yearbook*, 1925, p. 572–574.

ments should be invited to give it their serious consideration, invoking for its solution, the assistance of the commission on voluntary emigration, and that they should be requested to make a report to the Council at its next session on the progress they have made in the execution of the recommendation.

M. Kalfoff declared that the decision of the Council would give the Bulgarian people greater faith in the future and would enable them to devote themselves with increased energy to the general restoration of the country. This was one of the greatest services the Council could render Bulgaria and she would be profoundly grateful. M. Rentis (Greece) expressed the desire that the principle of the inviolability of a nation's territory emphasized in the report of Sir Austen Chamberlain might henceforth be invariably respected and consistently applied for the guaranty of peace.

On several occasions in the Council the significance of the proceedings was the subject of declarations which were unanimously approved.

On October 26 the rapporteur, Mr. Chamberlain drew attention to the fact that the frontier incident had arisen between two states Members of the League of Nations, both of which had accepted the obligations of the Covenant, in particular, Arts. 10 and 11. He continued:[1]

Such incidents as that which has caused our present meeting have sometimes had very serious consequences in the past, when there was no machinery such as that offered by the League for their peaceful adjustment and for securing justice to both parties; but it would be an intolerable thing — I go so far as to say that it would be an affront to civilization — if, with all the machinery of the League at their disposal and with the good offices of the Council immediately available — as this meeting shows — such incidents should now lead to warlike operations instead of being submitted at once for peaceful and amicable adjustment by the countries concerned to the Council, which will always have regard to their honor and to the safety and security of their nations.

The Greek representative observed on different occasions that his country had been called upon to take rapid steps for its legitimate defense. On October 28 the president of the Council said:[2]

[1] *Official Journal*, VI, p. 1699. [2] *Ibid.*, VI, p. 1709.

It was essential that such ideas should not take root in the minds of nations which were Members of the League and become a kind of jurisprudence, for it would be extremely dangerous. Under the pretext of legitimate defense, disputes might arise which, though limited in extent, were extremely unfortunate owing to the damage they entailed. These disputes, once they had broken out, might assume such proportions that the Government, which started them under a feeling of legitimate defense, would be no longer able to control them.

The League of Nations, through its Council, and through all the methods of conciliation which were at its disposal, offered the nations a means of avoiding such deplorable events. The nations had only to appeal to the Council. It had been shown that the criticisms which had been brought against the League of Nations to the effect that its machinery was cumbersome and that it found it difficult to take action in circumstances which required an urgent solution, were unjustified. It had been proved that a nation which appealed to the League, when it felt that its existence was threatened, could be sure that the Council would be at its post ready to undertake its work of conciliation.

M. Guani (Uruguay) and M. de Mello Franco (Brazil) were of opinion that the results achieved by the Council would have a very considerable effect in the countries of Latin-America. Seven Latin-American countries — Cuba, Guatemala, Honduras, Nicaragua, Peru, Salvador and Venezuela — addressed telegrams to the Secretary-General, stating the interest they attached to a pacific settlement of the question. Similar telegrams were received from Australia, Hungary, Luxemburg, Siam and Switzerland.

Upper Silesian Social Insurance Funds

The question of the transfer by the German Government to the Polish Government of social insurance funds in Upper Silesian territory ceded by Germany to Poland was brought before the Council in June. In a letter to the Council submitted in March the Polish Government recalled that, in accordance with Art. 312 of the treaty of Versailles, the Council on December 9, 1924, [1] had invited Germany to pay Poland the sum of 26 million gold marks,

[1] *Official Journal*, VI, p. 126, 200. The stipulation is that the findings of a commission shall be submitted to the Council, whose decisions "shall forthwith be accepted as final." The Council adopted the conclusions of the commission.

the first instalment of 6 millions to be remitted on February 1, 1925. In reply to an invitation of the Polish Government to remit the first instalment the German Government stated that it had requested the Agent General for Reparations Payments to deduct the sum in question from the payments to be made under the Dawes scheme. The Polish Government having subsequently requested the Council to give effect to its decision of December 9, the latter decided to discuss the question in June. It invited the Secretary-General to notify to this effect the German Government, the Agent General for Reparations Payments and the Reparation Commission, requesting them to communicate to the Secretariat any observations they might desire to make.

At its June session the Council examined the replies[1] which had been received. From the letter of the Agent General for Reparations Payments, it appeared that in consequence of an agreement reached on January 14, 1925, by the allied finance ministers, he was not in a position to make any payment for the purpose specified out of funds received or to be received under the Dawes scheme. The Reparation Commission in its report stated that it was without authority in the matter and suggested that it would be necessary to submit the question to arbitration as provided in the London protocol of August 30, 1924. The German Government, on the other hand, maintained that payment of the instalment in question could only be effected out of the Dawes annuities, in accordance with the Dawes scheme, which was accepted by the London protocol of August 16, 1924, and of which Poland was not a signatory. In the opinion of the German Government a doubt accordingly existed as to the method by which it should discharge its obligations.

On June 9, the Council expressed its regret[2] that in consequence of a legal controversy social insurance funds which were of great importance for the working population of Upper Silesia had not been at the disposal of the competent authorities at the appointed date. The Council considered that the question might be settled by arbitration as provided for in the London protocol and as suggested by the Reparation Commission.

The question is being arbitrated by the board established by Clause I of Annex II to the London protocol of August 16, 1924,

[1] *Official Journal*, VI, p. 946. [2] *Ibid.*, VI, p. 862.

which deals with disputes between the Reparation Commission and Germany.[1]

Distribution of the Ottoman Public Debt

On April 18 the arbitrator for disputes in connection with the distribution of the Ottoman Public Debt, Eugène Borel, who was appointed by the Council in conformity with the treaty of Lausanne, deposited his arbitral award at the League Secretariat and notified his decision to the interested parties. The treaty of Lausanne provides for the distribution of the Ottoman public debt among Turkey, states in whose favor territory has been detached from the Ottoman Empire since 1912, and states created since the war in territories formerly belonging to Turkey in Asia. The distribution concerns both the annual charges and the capital of the debt. The Council of the Ottoman Public Debt had already determined the annuities payable by the states concerned. Several states, however, having made use of the right conferred upon them by the treaty to appeal against the decisions of the Council of the Debt, the Council of the League appointed M. Borel as arbitrator in virtue of Art. 47 of the treaty of Lausanne.

M. Borel, who took up his duties on January 20, was called upon to give his decision in three months. After hearing the representatives of the interested parties — Syria and Lebanon (territories under French mandate), Iraq, Palestine and Transjordania (territories under British mandate), Bulgaria, Greece, Italy and Turkey — who appeared before him at Geneva in March, M. Borel settled all the points at issue, including questions as to dates, assigned revenues and the scale to be applied for the allocation of revenues. As certain decisions of the arbitrator confirmed the views of the appellants, M. Borel took steps for the revision of the plans drawn up by the Council of the Debt, in so far as this was necessary.

The distribution of the capital is intrusted by the treaty to a commission. In the event of failure to reach agreement, M. Borel will also be called upon to give an award on the distribution of the capital of the debt.

[1] For text see this series, VIII, p. 250.

2. FINANCIAL RECONSTRUCTION

Austria

[See also *Yearbook*, p. 451.]

The financial reconstruction of Austria was practically complete as an international problem by January 1, 1926. The year 1925 had been taken up with making provision for the relinquishment of the outside control. Austria itself took many steps looking to this end and the Council of the League, on the advice of the Financial Committee and its own Austrian Committee, took many decisions destined both to facilitate Austrian ambitions, to satisfy sound requirements of reconstruction and to insure economic progress of the country.

The outstanding event of 1925 was the survey by economic experts of the conditions of the country. Austria having requested the Council on April 18 to appoint experts to report upon the economic conditions of the country, the Council approved the request and on June 9[1] appointed Walter T. Layton and Professor Charles Rist to conduct the inquiry. Mr. Layton has been editor of the leading English *Economist* since 1922, and was later director of the British National Federation of Iron and Steel Manufacturers. He has been lecturer on economics at the Universities of London and Cambridge and represented the ministry of munitions on missions to Russia and the United States in 1917. His works include "An Introduction to the Study of Prices" and "Relations of Capital and Labour." Professor Rist is one of the best known French economists, being professor of political economy at Paris University. In 1922 he conducted an economic inquiry in Austria, and had just returned from a lecturing tour in the United States.

The report of Messrs. Layton and Rist was laid before the Council at its September meeting. The experts drew attention to the fact that Austria, like all other European countries, had not succeeded in healing the wounds caused by the war. She had, however, side by side with the process of financial reconstruction, made very great progress in the economic sphere. The

[1] *Official Journal*, VI, p. 860.

financial crisis of 1924, following a period of speculation and causing the failure of one large bank and many smaller ones, restricted credit and high interest rates, had abated gradually during the winter of 1924–1925. In some quarters it was assumed that Austrian industry had been seriously hit by the financial crisis, while in others it was held that Austria would be unable to cope with the new conditions in which she had been placed. The opinion of the experts was that neither deduction was justified. The marked rise in unemployment was due to the fact that Austrian industry had made a considerable effort to reduce the cost of production, to eliminate superfluous workers and to introduce more economical methods of working. This tendency was the counterpart in private business of the reconstruction work in the sphere of public finance.

All the indices commonly used to measure economic progress bore witness to the fact that there had been a marked and regular improvement since 1922. The upward movement continued during the first half year of 1925. The iron and steel production, favorably influenced in 1923 by the occupation of the Ruhr, decreased in 1924, but showed recovery in 1925. The trade balance showed a considerable deficit, largely covered by revenues from the expenditure of foreign visitors, from investments in states formerly belonging to the Austro-Hungarian Monarchy, and from the railways.

Vienna plays an important rôle in the economic life of Austria. Its industries are the main source of Austrian exports. The trade of the port of Vienna on the Danube is rapidly increasing and Vienna has remained an important commercial and banking center. Its population, which decreased after the war, has begun to increase again since 1920. In a word, Vienna, far from being a too heavy burden on the resources of a small country, contributes largely to its prosperity and economic development.

The chief economic difference between the Austria of 1913 and that of to-day is that present-day Austria is no longer a self-sufficing unit. The prewar trade between Austria and the various provinces forming the Dual Monarchy has become international trade. Like England, Belgium or Switzerland, Austria is now a country living by foreign trade. It is undoubtedly possible for Austria to increase her agricultural production and to reduce her

fuel imports by development of water-power reserves. But such measures, although they may diminish, can not remove the dependence of a country with a small territory upon external trade. The process of industrial re-adaptation is not a question of adjusting production to the home market; Austrian industry must be reorganized for foreign trade. Whether Austria can find the necessary markets depends partly upon the efficiency of her production; it depends far more, however, upon the tariff policy of the countries with which she must exchange her products. The commercial policy of states created since the war, based upon the idea of economic as well as political independence, has produced chaotic results in an area which, as Austria-Hungary, had hitherto enjoyed complete freedom of trade. The results of this policy are being felt by all the succession states, most keenly of all by Austria. The experts express the opinion that Austria's economic troubles do not differ essentially from those of many other countries.

The experts draw attention to the importance for Austria to be able to obtain capital at moderate interest. The circulating capital has been used up by inflation, and the working balance of industry has decreased. Bank deposits had shrunk at the beginning of 1923 to insignificant sums. Although they have recovered very considerably since that date, they still amount to less than 11% of the 1913 total. Shortage of capital is naturally reflected in high rates of interest, which are a heavy burden on production. A study of the present tendencies of the money market would seem to indicate that the bank rate is likely to fall in the future, but a downward movement must necessarily remain in relation to the supply of capital. The rate, therefore, must in any case be expected to remain at a figure which, according to western standards, will be relatively high.

It is of supreme importance to Austria that her foreign credits should not be withdrawn. This depends upon the confidence of foreign money markets in the financial situation, in the policy of the National Bank, and in the political stability of Austria.

Improvement of Austria's commercial situation is dependent upon the possibility for Austrian industry to compete with that of other countries. As regards plant and machinery, efficiency of labor, wages and social charges, the experts consider that Austria is in as good a position as the neighboring countries. Economy

is incumbent upon all countries at such times as Austria is experiencing at present, and the present fiscal and social charges are not abnormally high. It is, however, desirable that they should not increase.

The present position shows many favorable symptoms. It is true that the revival of Austria has been accompanied by serious increase in unemployment. This, however, does not seem to be due to defects inherent in Austria's economic constitution.

In order that the level of prosperity may rise more rapidly, it is essential that Austria should obtain wider markets and that during the period of adaptation she should have the necessary capital at her disposal.

The recovery of Austria is also dependent upon certain internal conditions:[1]

> The first of these is obviously the maintenance of a financial policy of strict budgetary equilibrium and monetary stability. This policy, which was inaugurated in 1922 with the help of the League of Nations, has been and still is the indispensable foundation of any permanent improvement.
>
> A second condition is the continuation of the work already begun in the direction of reducing cost prices throughout industry. The reduction in purchasing power all over the world means that in every country competition is keener than before the war and that the reward will go only to those who can succeed in cutting their costs to the minimum by a combination of economy, efficient administration and scientific development. . . .
>
> Austria was the first country in Europe to carry through a really successful program of monetary stabilization, and later reforms have been largely based on the model thus set. She could to-day perform a service which would be at least as full of hope for the future by initiating a new commercial policy based on the ideal of economic cooperation rather than on that of narrow self-interest. If this policy were indeed realized, its beneficial results would not be limited to the Danubian states alone but would soon make themselves felt throughout the length and breadth of the European continent.

The Austrian Parliament voted in August a series of laws, which, together with those passed in previous months and various de-

[1] *The Economic Situation of Austria. Report* . . . by W. T. Layton and Charles Rist (C. 440 (1). M. 162 (1). 1925. II), p. 45.

crees promulgated by the Government, provided for the almost complete execution of the agreement of September, 1924. The more important of the series concern the prerogative of the self-governing provinces to levy taxes and confer upon the Austrian finance minister until 1930 the right of veto for taxes exceeding certain fixed limits. Other laws aim at combining to a certain extent the federal administration and the administration of the provinces. The Federal Audit Office is empowered to supervise the financial operations of the provinces, with the exception of those of the province and city of Vienna. These laws were tabled in order to guarantee an effective control of government expenditure after the departure of the Commissioner-General.

By another law the state timber industry is reorganized on an independent commercial basis. This measure, although not providing for entire autonomy (as in the case of the railways), aims at the working of this industry on purely economic lines.

The consequence of the discussions of the Council and the Financial Committee in September was the conclusion of a new agreement between the League of Nations and the Austrian Government, in view, first, of the relaxation and, finally, of the abolition of the control system in force since 1922. In the third reconstruction protocol (Geneva, 1922) it is stipulated [1] that the functions of the Commissioner-General shall be brought to an end by a decision of the Council, when the latter shall have ascertained that the financial stability of Austria is assured, without prejudice to any special control of the assets assigned for service of the loan. This stipulation also figured in the agreement of September, 1924, between the League and the Austrian Government.

The Financial Committee, after a careful study of the expert's report and of information furnished by the Austrian representative and the Commissioner-General, arrived at the conclusion that the main conditions of the reconstruction program had been fulfilled, and reported to this effect to the Council on September 10. [2] The Austrian currency had been stable since the reconstruction scheme had been drawn up. The ordinary budget for 1924 had shown a surplus which had been devoted to covering a substantial part of the capital expenditure. A similar result might be expected for 1925, the level at which the results were

[1] *Treaty Series*, XII, p. 409. [2] *Official Journal*, VI, p. 1498.

obtained being higher than had been originally hoped. Part of the capital expenditure had been and was being met out of the League reconstruction loan. These results, coupled with the great progress made in the execution of the agreement of September, 1924, enabled the Council to consider the abolition of the control. As, however, the sudden and complete suppression of all supervision might have given rise to some anxiety, the Council decided to take certain precautions in order to set at rest any apprehension which might be felt.

The attention of the Financial Committee had been drawn to the fact that Austria was still in constant need of foreign capital. The funds already at her disposal have entered the country in the form of short-term credits. In the opinion of the experts, it is vitally important that the foreign credits should be consolidated in the form of long-term loans. This depends not only upon the rate of interest but, above all, upon the maintenance of the confidence of foreign money markets in the Austrian financial situation.

The Council, therefore, taking into account the various aspects of the situation, provided for the *gradual* abolition of the control.

The first stage, of *relaxed or modified control*, began on August 11, in virtue of a decision of the Commissioner-General which was communicated to the Austrian Government. The effect of this modification is that the Commissioner-General no longer intervenes in the details of the budget or in specific expenditure, but confines himself to the supervision of the general budget position. The Council, moreover, in agreement with the Austrian Government, indorsed proposals of the Financial Committee to the effect that the control of the Commissioner-General, from January 1, 1926, should be limited to the assigned revenues and the expenditure of the balance of the reconstruction loan. The Commissioner-General is no longer obliged to reside permanently in Vienna. This marks the beginning of the second stage of the *provisional abolition of control*. The abolition will continue provisional until the passing of the 1926 budget and the submission of the closed accounts for 1925. When these conditions have been fulfilled, the control exercised by the Commissioner-General comes to an end.[1]

[1] Financial Reconstruction of Austria. *Dates and Conditions of Termination of Control* (C. 541. 1925. II).

The application of these decisions depended upon legislation by the Austrian Parliament providing for the retention in office for a period of three years of the foreign adviser to the Austrian National Bank and for the possibility during ten years of the resumption of the control, should the proceeds of the assigned revenues be insufficient for the loan service or budgetary equilibrium be seriously menaced.[1] The control would be reestablished by the Council by a three-fourths majority.

The beginning of the final stage in financial reconstruction was marked by the Council's discussions of December 9, when measures were taken in view of the progressive abolition of the League budgetary control, while reserving the rights of the states guarantors of the reconstruction loan. The Council, in order to facilitate the return of normal economic conditions, urged states in commercial relations with Austria to assist in her economic recovery by widening the outlets for Austrian production and trade. At its September meeting the Council had requested the Financial Committee to discuss with the Austrian Government and other interested parties arrangements for the management of the assigned revenues and the control of the expenditure of the balance of the reconstruction loan in the event of the departure of the Commissioner-General, as well as the mode of communication between the Austrian Government and the Committee of Control of the Guarantor States. It had further referred to the Economic Committee for examination the report of Mr. Layton and Professor Rist on economic conditions in Austria. Both committees submitted proposals, which on December 9 were adopted by the Council, acting in complete agreement with the Austrian Government.[2]

The balance of the loan will be progressively applied for the improvement of Austria's economic life. It will be retained in liquid form in a separate account and will be released for such expenditure as the Financial Committee may approve. At the beginning of 1926 a substantial part will be devoted to electrification of railways and to productive investments. The system contemplated by the Financial Committee for the administration

[1] The decision of the National Council was passed on October 14, and the federal law on December 1, 1925. The texts are in Document C. 797. 1925. II.

[2] Document C. 797. 1925. II.

of the balance has been so devised as to eliminate every element of general financial control and to leave Austria in complete control of her own budget. The special control of the assigned revenues, as planned by the Financial Committee, can in no case encroach upon Austria's political and economic independence. The Committee of Control, pending the complete discharge of the reconstruction loan, is entitled to address communications direct to the Austrian Government. The yield of the revenues assigned as security for the loan continues to be paid into a special account under the management of trustees appointed by the Council. The latter draw from the account the sums necessary for the loan service and place the balance at the disposal of the Austrian Government. The trustees keep the Committee of Control informed of all matters concerning the accounts intrusted to their management.

The closed accounts for January–November and the estimates for December, 1925, in millions of schillings follow:[1]

	Expenditure	*Receipts*	*Surplus or deficit*	*Investments*	*Surplus excluding investments*
Total for 1925	842.37	842.77	+0.40	76.09	76.49
Estimates for 1926 . .	784.48	726.88	—57.60	78.00	20.40

On December 31, 1925, the total number of officials had been reduced by 83,368. The controlled revenues for December yielded 48.6 million schillings, the monthly requirement for loan service being 8.3 million schillings. The period January–September, 1924, showed imports of 2,442.9 million; the same period in 1925 of 2,004.3. In that period during 1924 the exports were 1,379.9 and in 1925 they were 1,440.3. For the same period an adverse balance of trade amounting to 1,063 in 1924 had fallen to 564 million schillings in 1925. The unemployed increased from 37,999 in September, 1922, to 207,832 in December, 1925. Deposits in savings banks were 2.1 million schillings gold in September, 1922, and 392.2 million in December, 1925. Percentage of gold cover for currency was 29.4% on January 7, 1923, and 57.7% in December, 1925.

[1] *Thirty-Seventh Report by the Commissioner-General*, p. 2.

Hungary

[See *Yearbook*, p. 455.]

The fiscal year of the Hungarian reconstruction scheme ends with June. With the end of April, 1925, the first year of the League's reconstruction work came to an end. When the Hungarian Parliament on April 17, 1924, voted the reconstruction act by which the League scheme became part of the law of the land, the crown had fallen to about 1/15,000th of its prewar value. The most obvious method of arresting the downward course and making it once more possible to balance the budget seemed to be a loan out of which deficits might be met without having recourse to inflation. The cardinal point of the scheme was thus a long-term foreign loan, secured by certain revenues, the yield of which was placed in the hands of a Commissioner-General appointed by the League to supervise the carrying out of a far-reaching program of reform. The scheme also provided for the establishment of a bank of issue independent of the Government, under rules strictly limiting the note circulation. The Commissioner-General took up his duties in Budapest on May 1, 1924. Negotiations for the foreign loan began soon afterward, and led, in June, to the successful placing of the amount of 250 million gold crowns contemplated in the scheme. The new bank of issue opened for business on June 24. The crown, which had declined still further, began to recover and soon reached a point (346,000 to the pound sterling) at which it has remained stable, in terms of sterling, ever since. Provision had been made in the League scheme for meeting deficits out of the loan proceeds up to the end of the financial year closing June 30, 1926, by which time the budget was to balance. The amount set aside for the first half of the calendar year 1924 was spent. The July, August and September deficits were more than offset by surplus revenue in the ensuing months. The financial year closed on June 30 without recourse being made to the loan proceeds to meet deficits, although 100 million gold crowns were available within the limits laid down by the plan. Thus the Hungarian budget actually balanced more than a year in advance of the program.

On the recommendation of the Financial Committee the Council on June 9, agreed to a certain increase in the salaries of

Hungarian officials and to the use of part of the reconstruction loan for capital investments. It drew attention to the necessity of the prompt conclusion of commercial treaties and of the reduction of tariff barriers. With regard to reductions of administrative staff proposed by the Economy Committee appointed by the Hungarian Government, the Council expressed its hope that these measures might be extended in a more radical scheme of reorganization appropriate to the present administrative requirements of Hungary.

On September 10, the Council, including M. Comnène (Rumania), M. Yovanovitch (Serb-Croat-Slovene State) and M. Walko (Hungary), heard a statement by Jeremiah Smith of Boston, Commissioner-General, on the progress of the work. Mr. Smith informed the Council that the reconstruction was making satisfactory progress. The budget was balanced. Instead of the deficit of 100 million gold crowns contemplated for the first year, Hungary had reported a surplus of 63 millions. The harvest had been good, and economic conditions, though not yet normal, were slowly but steadily improving. Mr. Smith considered that, if the present conditions continued, there was reason to believe that the stability of the state finances would be maintained.

The Sixth Assembly particularly emphasized the importance of better commercial relations:

> It considers that the measures taken by the Hungarian Government with a view to reestablishing freedom of trade are of a kind to encourage the development of the country; it would welcome the conclusion of further commercial agreements between Hungary and other countries — particularly the adjoining countries with which negotiations are in progress — which would tend to bring about a progressive reduction of the tariffs in Central Europe and would thus contribute to establishing closer economic relations.

This was again the subject of a resolution by the Council in December, at which time Royall Tyler, the assistant commissioner-general, stated that the financial recovery of Hungary had advanced so far that it was "possible to look forward to a time when the Council would be able to pronounce the work finished."

The provisional budgetary results of July–December, 1925, showed a surplus of 57.4 million gold crowns, July being the

only month to exhibit a deficit. Total expenses in that semester were 300.2 million against receipts of 357.6. For the semester January–June, 1926, the estimates amount to 313.6 million gold crowns. All taxes, including those pledged to the external loan service, regularly show an increase above estimates. This apparent condition has resulted in the release of proceeds from the external loan for capital purposes of the state. The program for thus employing the loan provides 20 million gold crowns expenditure from January–June, 1926, and 50 million gold crowns during the fiscal year 1926–27. The external loan was valued at 271 million gold crowns on December 31, 1925, of which amount 153 millions was a balance available. Hungarian commerce in 1925 amounted to 742.1 million gold crowns in imports and 701.3 in exports, an adverse balance of 40.8 millions. This contrasted with an adverse balance of 127.8 in 1924 and 253 millions in 1920. The various indexes of conditions show improvement. In currency reform the pengö has been adopted as a unit, in which all commercial and other balance sheets are to be revalued. The pengö is equivalent to 12,500 paper crowns, or .8632 gold crowns, or $0.1749, with 5.7176 equaling one dollar.

Greek Refugee Settlement

[See *Yearbook*, p. 457.]

Thanks to the successful issue in December, 1924, of a loan of £10,000,000, the scheme of which was drawn up under the auspices of the League in 1923 and 1924, the Greek Refugees Settlement Commission was provided with the financial means contemplated in the protocol signed by the Greek Government and accepted by the League of Nations.

At the Council meeting of September 10, the chairman of the Greek Refugees Settlement Commission, Charles P. Howland, outlined the work accomplished by the commission since its establishment in September, 1923. In November of that year, when the commission began its work, there arrived at Piræus and other Greek ports, about 1,400,000 refugees, 1,200,000 of whom were destitute. To-day all but a very small number had been or were being established in the productive life of Greece. These people, Mr. Howland said, would in the course of a few

years be one of her greatest assets, if indeed they could not already be considered as such. Mr. Howland paid a tribute to the efforts of the Greek Government which had undertaken to establish the refugees even before the commission began work. He further recalled that, through the generosity of the Bank of England and the Greek National Bank, the Commission had been enabled to do its work without waiting for the floating of the international loan of £10,000,000, issued in December, 1924. Of this fund the commission had so far spent £7,000,000. The British and Greek loans had been repaid and a considerable number of refugees had been established. The balance of £3,000,000 had already been disposed of in the budget estimates published by the commission.

With the approval of the Greek Government the majority of the refugees had settled in Greek Macedonia. This region, once devastated by war, is now peopled by a homogeneous colony of Greek refugees.

Mr. Howland added that the revenues assigned to secure the loan were more than double the amount necessary for interest and sinking fund.

Up to September 30, the total area of the land handed over to the commission for colonization was 6,676,499 stremmata (1,615,700 acres); 2,038,194 stremmata (493,200 acres) were cultivated in 1924–25 as against 1,059,648 (255,434 acres) in 1923–24. Health conditions are gradually improving among the farmer settlers. Malaria is decreasing, thanks to the commission's medical service. A total of 145,612 families had been settled.

The commission has established four urban districts at Athens and the Piræus. In these 851 houses and 64 shops had been constructed, valued at £106,450.

On September 30 the balance of the loan amounted to £3,258,659. The expenditure during the first nine months of 1925 was £3,132,372, in detail:

Agricultural settlement	£2,900,493
Urban settlement	207,948
General office expenses	23,435
Costs of first installation	500

II. DUTIES UNDER THE COVENANT

1. REDUCTION OF ARMAMENT

[See *Yearbook*, p. 463.]

Conference for the Control of the International Trade in Arms, Munitions and Implements of War

The conference convened by the Council for the control of the international trade in arms, munitions and implements of war met on May 4 at Geneva with M. Carton de Wiart, former Belgian prime minister, in the chair and came to an end on June 17. The following instruments were drawn up: A convention, a protocol relating to chemical and bacteriological warfare, a declaration by the Spanish Government regarding the territory of Ifni,[1] a protocol of signature and a final act. The following 44 states were represented:

Argentine[2]	France	Panama
Austria	Germany	Persia[3]
Belgium	Great Britain	Poland
Brazil	Greece	Portugal
Bulgaria	Hungary	Rumania
Canada	India	Salvador
Chile	Irish Free State	Serb-Croat-Slovene State
China	Italy	Spain
Colombia	Japan	Sweden
Czechoslovakia	Latvia	Switzerland
Denmark	Lithuania	Turkey
Egypt	Luxemburg	United States
Esthonia	Netherlands	Uruguay
Ethiopia	Nicaragua	Venezuela
Finland	Norway	

In his opening speech Count Carton de Wiart, after a historical survey of the question, described the salient features of the draft convention submitted for discussion, which had been prepared by

[1] A Spanish enclave on the Atlantic coast of Morocco.

[2] The Argentine delegates sat as "observers."

[3] The Persian delegation, in the course of the debates, found itself unable to share the views of the other delegations with regard to the inclusion in the special zones of the Persian Gulf and the Gulf of Oman. It therefore withdrew from the conference.

the Permanent Advisory Commission for Military, Naval and Air Questions and the Temporary Mixed Commission for the Reduction of Armaments, and in its general plan followed the main lines of the St. Germain Convention, its aim being to restrict to Governments the trade in arms serving exclusively warlike purposes. It provided for a system of international publicity which should render it possible to place before the public a yearly table of exports and imports of war material. The principal obstacles which the conference might have to overcome were the definition of war material, the unification of nomenclature in import and export statistics, the definition of the bodies upon whom the conference would confer the right to purchase war material, supervision and publicity, geographical and technical questions. The President considered that, despite the complexity of the questions to be studied, the conference might enter upon its work with a large measure of confidence in its final success.

The greatest asset of the conference lay in its composition. Forty-four nations, members and nonmembers of the League were represented. "I may be allowed", he said, "to refer in particular to the presence among us of the delegations of four countries not belonging to the League of Nations, namely, the United States, Germany, Turkey and Egypt. The great American republic had already lent its assistance to the Temporary Mixed Commission, and its official participation in the present conference acquires a new and valuable significance from the fact that, as a great producing country, America's signature and ratification are indispensable to our success. . . . The collaboration of the American, German, Turkish and Egyptian delegations, coming from states which do not belong to the League of Nations, gives our conference a degree of universality which the League of Nations has never yet attained."

The conference elected Dr. J. Gustavo Guerrero (Salvador) as vice-president. It appointed a General Committee composed of one representative of each delegation to examine the separate articles of the draft convention with the proposed amendments. It then set up four special committees on the following subjects:

(1) *Technical Aspects of Military, Naval and Air Questions:* Chairman: General Sosnkowski (Poland); vice-chairmen: Vice-Admiral Surie (Netherlands), and Vice-Admiral de Souza e Silva (Brazil).

(2) *Legal Questions:* Chairman: Nicolas Petresco COMNÈNE (Rumania); vice-chairman: E. BUERO (Uruguay).

(3) *Customs, Commercial and Statistical Questions:* Chairman: Dr. Christian LANGE (Norway); vice-chairman: Dr. Caracciolo PARRA-PEREZ (Venezuela).

(4) *Special Zones:* Chairman: Emilio DE PALACIOS (Spain); vice-chairman: L. DUPRIEZ.

The work of the conference may be indicated by summaries [1] of the documents signed.

The Convention. The convention comprises 41 articles and is divided into five chapters. Its object is to establish a general system of supervision and publicity for the international trade in arms, munitions and implements of war, and a special system for areas where measures of this kind are generally recognized as particularly necessary.

Chap. I defines the arms, munitions and implements to which the convention applies. They are divided into five categories, — arms of exclusive war utility, arms of possible war utility, warships, aircraft and other arms.

Chap. II lays down that Governments only shall have the right to export or import arms of the first category (exclusive war utility). Exceptions are contemplated in the case of manufacturers of war material and duly authorized rifle clubs or similar associations. Consignments for export must be accompanied by a license or declaration of the importing Government. Arms of the second category (possible war utility) may also only be exported under cover of export documents. As regards the foreign trade in the first and second categories, the convention provides for publicity, in the form of the regular publication of statistical returns within two months of the close of each quarter. The trade in arms of the third and fourth categories (warships and aircraft) is subject to publicity regulations only. The trade in arms of the fifth category is free.

Chap. III defines the system to be applied to certain areas referred to as special zones. These comprise:

(*a*) A land zone consisting of the African Continent, with the exception of Egypt, Lybia, Tunisia, Algeria, the Spanish posses-

[1] For full texts see *Official Journal*, VI, p. 1117.

sions in North Africa, Abyssinia and the Union of South Africa, together with the territory under its mandate, and of Southern Rhodesia. This zone includes the adjacent islands situated within 100 marine miles from the coast, Prince's Island in the Bight of Biafra, St. Thomas, Annobon and Sokotra, but not the Spanish islands north of 26° north latitude; it includes further the Arabian peninsula, Gwadar, Syria, Lebanon, Palestine, Transjordania and Iraq;

(*b*) A maritime zone, including the Red Sea, the Gulf of Aden, the Persian Gulf, and the Gulf of Oman, bounded by a line drawn from and following the latitude of Cape Guardafui to the point of intersection with longitude 57° east of Greenwich and proceeding thence direct to the point at which the eastern frontier of Gwadar meets the sea.

To these zones the export of all arms save those of the third category (warships) is forbidden except under certain conditions. It may be authorized, if the high contracting party exercising sovereignty, jurisdiction, protection or tutelage over the territory to which the export is consigned is willing to admit the articles in question and if these articles are intended for lawful purposes.

Chap. IV contains three provisions of a special nature. The first relates to Abyssinia, whose Government has expressed its willingness to put into force in its territory measures designed to give effect to the provisions of Chap. III; the second relates to the reservations which a certain number of countries bordering on Russia may wish to make in order to adapt the general principles of the convention to the special position in which they might be placed owing to the nonadhesion of Russia; the third provides for the case of countries possessing extraterritorial jurisdiction in the territory of another state.

Chap. V is confined to general provisions. It lays down that the convention shall not apply to arms forwarded to the military forces of the exporting country, wherever these forces may be, or to those carried by the individual members of such forces or by other persons in the service of the exporter. It is also provided that, in time of war, the stipulations of Chap. II (supervision and publicity) so far as any consignment of arms to, or on behalf of, a belligerent is concerned, shall be suspended until the restoration of peace.

All provisions of international conventions prior to the present one shall be considered as abrogated in so far as they relate to the matter dealt with therein. The convention shall not, however, be deemed to affect rights and obligations arising out of the Covenant of the League of Nations, the treaties of peace signed in 1919 and 1920, the Washington treaty of February 6, 1922, and other treaties and engagements concerning the prohibition of export, import or transit of arms. Disputes arising between the contracting parties as to the interpretation or application of the convention shall, if they can not be settled by direct negotiation, be referred for decision to the Permanent Court of International Justice. Should the parties to the dispute not be signatories of the Statute of the Permanent Court, the dispute shall be referred either to the Permanent Court or to a court of arbitration constituted in accordance with The Hague convention of 1907, or to some other arbitral tribunal. The convention will come into force after ratification by 14 powers. Ratification and subsequent accessions will be notified to the French Government.

The convention has been signed by the following states:[1] Abyssinia, Austria, Brazil, British Empire, Bulgaria, Canada, Chile, Czechoslovakia, Esthonia, Finland, France, Germany, Hungary, India, Italy, Japan, Latvia, Luxemburg, Poland, Rumania, Salvador, Serb-Croat-Slovene State, Spain, the United States, Uruguay and Venezuela.

The protocol provides that the instruments drawn up by the conference are open for the signature of all states until September 20, 1926.

In the final act the signatories declare that their Governments intend to apply strictly their internal laws and regulations to prevent fraudulent commerce in arms, and to exchange all information on the subject; they declare further that the convention must be considered as an important step toward a general system of international agreements regarding arms and ammunition and implements of war, and that it is desirable that the international aspect of the manufacture of such arms, ammunition and imple-

[1] Through 1925. The protocol was further signed by Denmark, Greece, Netherlands, Nicaragua, Portugal, Switzerland, Turkey and Venezuela. The final act was further signed by Belgium, China, Egypt, Greece, Irish Free State, Netherlands, Siam, Sweden and Venezuela.

ments of war should receive early consideration by the different Governments.

Protocol relating to Chemical and Bacteriological Warfare. This protocol, which is mainly due to the initiative of the American and Polish delegations, contains a declaration by which the contracting states recognize that the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilized world, and that prohibition of such use has been made in treaties to which the majority of states are parties. With a view to the acceptance of this prohibition as a part of international law, binding alike the conscience and the practice of nations, the contracting states, in so far as they are not already parties to treaties prohibiting such use, accept this prohibition, agree to extend it to the use of bacteriological methods of warfare, and agree to be bound as between themselves according to the terms of this declaration. The high contracting parties further undertake to do all in their power to induce other states to adhere to the protocol. Adhesions will be notified to the French Government, and, by the latter, to all signatory and adhering states. The protocol will come into force for each state as from the date of the deposit of its ratification.

The protocol has been signed by Abyssinia, Austria, Brazil, British Empire, Canada, Bulgaria, Chile, Czechoslovakia, Denmark, Esthonia, Finland, France, Germany, Greece, India, Italy, Japan, Latvia, Lithuania, Luxemburg, Netherlands, Nicaragua, Poland, Portugal, Rumania, Salvador, Serb-Croat-Slovene State, Spain, Switzerland, Turkey, the United States and Uruguay.

Declaration of the Spanish Government. By this declaration the Spanish Government agrees to the inclusion in the special zones of the territory of Ifni (North Africa) and to the application to this territory of the system set forth in Chap. III of the convention, unless and until it notifies the contracting parties of a decision to the contrary.

The declaration has been signed by Abyssinia, Austria, Brazil, British Empire, Bulgaria, Canada, Chile, Czechoslovakia, Esthonia, Finland, France, India, Italy, Japan, Latvia, Luxemburg, Poland, Rumania, Salvador, Serb-Croat-Slovene State, and Spain.

Coordination Commission

The Coordination Commission held its first session from February 16 to 18 at Geneva with Afranio de Mello Franco (Brazil), acting president of the Council, in the Chair. As stipulated by the Council's resolutions of October 3 and December 9, 1924, this commission is composed of the Committee of the Council, assisted by representatives of the League's technical organizations sitting in an advisory capacity. The first session was attended by the following members:

Committee of the Council: L. Dupriez (Belgium), Dr. F. Veverka (Czechoslovakia), M. Paul-Boncour (France), Ronald J. McNeill (Great Britain), M. Garbasso (Italy), M. Matsuda (Japan), M. Eduardo Cobian (Spain), Erik Sjöborg (Sweden), Alberto Guani (Uruguay).

In an advisory capacity:

Economic Committee: Antoine Wieniawski (Polish), Julio A. Barboza Carneiro (Brazilian).

Financial Committee: Vilem Pospisil (Czechoslovak).

Advisory and Technical Committee for Communications and Transit: M. Georges Popescu (Rumania), M. Heinrich Rheinhardt (Austria).

Permanent Advisory Commission for Military, Naval and Air Questions. Military Members: Colonel E. Réquin (France), Capt. Ugo Leone (Italy); *Naval Members:* Rear Admiral Aubrey C. H. Smith (Great Britain), Rear Admiral J. Kiyokawa (Japan); *Air Members:* Commander E. de Carvalho (Brazil), Lieutenant Colonel Garcia de Pruneda (Spain).

Employers' Group of the Governing Body of the International Labor Office: Fr. Hodacz (Czechoslovak), M. Oersted (Danish).

Workers' Group of the Governing Body of the International Labor Office: Léon Jouhaux (French), J. Oudegeest (Dutch).

The agenda included the question of the control of the private manufacture of arms, munitions and implements of war and a report on statistical information with regard to the trade in war material. The general discussion during the first session bore mainly on the methods of work to be adopted by the commission in order to fulfil the duties intrusted to it by the Assembly and the Council. The report was accepted at the 33rd session of the Council.[1]

[1] *Official Journal,* VI, p. 443; the text of the report at p. 554.

Preparatory Commission for the Disarmament Conference

By a resolution of the Sixth Assembly the Council is invited to make a preparatory study with a view to a conference for the reduction and limitation of armaments. The Council at its December meeting set up a commission to prepare the work of the conference and laid down the main lines of its program.

Regarding the composition of the commission the report to the Council said:[1]

> These proposals are very skilfully designed to meet the requirement that the higher political direction and coordination of the preliminary work should be concentrated in the hands of accredited representatives of the Governments. In view of the very diverse features which the problem presents in different parts of the world and in order to meet the wishes of the Assembly, the scheme rightly provides for the extension of the leading organization by adding to the representatives of states Members of the Council a certain number of representatives of other states which are in a special situation in regard to this problem. It also provides means of enabling states not directly represented to make their views heard, and it empowers this commission of Government representatives to obtain the opinions of experts specially qualified to advise on particular questions. Another advantage offered by the scheme submitted to us is that it creates a well-defined, yet elastic, system of cooperation in the work of disarmament with the technical organizations of the League.

This commission includes representatives of states Members of the Council and of states which, by reason of their geographical situation, are in a special position as regards the disarmament problem and are not otherwise represented on the commission, namely, Bulgaria, Finland, the Netherlands, Poland, Rumania and the Serb-Croat-Slovene State. Germany, the United States and Russia have been invited to send representatives.

Any state which is not represented on the commission is entitled to submit memoranda on matters in which it is specially interested, and to be heard in support of such memoranda. The commission is moreover empowered, in the case of special questions, to call upon the assistance of any state, which in its opinion may be particularly interested in these questions. If the constitution

[1] *Official Journal*, VII, p. 164.

of the Council is altered during the proceedings of the commission, the composition of the latter may be changed in order to insure the continuity of its work.

The commission will draw up proposals for the Council and will direct and coordinate all work preparatory to the conference. It will be entitled to seek the cooperation and advice of the competent League organizations, which, in their turn, may submit on their own initiative any suggestion they may consider useful. Thus the commission will be able to seek the advice of the Permanent Advisory Commission on any questions relating to the military, naval or air aspect of the matters in hand. For the economic aspect it will call upon a joint commission, composed of two members each of the Economic, Financial and Transit Organizations (to be appointed by the Council after consulting the chairmen of the respective committees), two members of the Employers' Group and two members of the Workers' Group of the Governing Body of the International Labor Office (to be appointed by that body). The joint commission may call in other experts under the same conditions as provided in the case of the Permanent Advisory Commission.

Under the standing authority of the president of the Council, the chairman of the commission may request the chairman of the Permanent Advisory Commission or the Joint Commission to assemble these bodies on a given date. The Preparatory Commission may at any time summon the chairman and the rapporteurs of the Permanent Advisory Commission and the Joint Commission to explain the views of these bodies. It may also summon and hear any persons whose special qualifications are calculated to facilitate its work on a given subject.

Program. The program of the commission, which will meet for the first time on May 17 at Geneva, includes the study of certain questions figuring on a list drawn up by the Council. In his report Dr. Benes summed up as follows the debates of the Council Committee on the subject:[1]

In the first place, recalling the resolution of the Fifth Assembly on the question of the reduction of naval armaments, the French, Italian and Japanese representatives stated on behalf of their Governments, that they

[1] *Official Journal*, VII, p. 167.

could not see their way to dissociate the various kinds of armaments — military, naval and air — and to consider them at separate conferences.

Secondly, a large number of delegates urged that it was impossible to deal with the disarmament question without reference to what has been called the potential war strength of the various countries — in other words, their population and their economic and industrial resources. As there could be no question of effecting a reduction in such factors, nor even of usefully examining them, they thought that it would not be practicable to find a fair basis for comparison between peace-time armaments properly so-called, unless the potential war strength of various countries were made comparable by organizing economic and financial assistance as provided in principle in Art. 16 of the Covenant.

Again, the French representative laid great stress on the point that one of the essential objects of the reduction and limitation of armaments, was to secure a position in which no country committing an aggression would be able to make head against the total forces which could be brought against it by the Members of the League acting conjointly in pursuance of Art. 16 of the Covenant and of regional agreements as contemplated in Art. 21.

Lastly, the British, French and Spanish delegates expressed the opinion that the question of an international supervision to insure that the observance of limitation of armaments was being observed should be examined by the Preparatory Commission. The French delegate emphasized the necessity of such supervision, particularly during the period when the arbitration and conciliation proceedings provided for in the Covenant of the League of Nations and in the various agreements recently concluded were in progress.

The Council had succeeded in reconciling the different points of view and in reaching unanimous agreement on the following questions, which are referred to the Preparatory Commission:

Question I.

What is to be understood by the expression "armaments"?

(*a*) Definition of the various factors — military, economic, geographical, etc. — upon which the power of a country in time of war depends.

(*b*) Definition and special characteristics of the various factors which constitute the armaments of a country in time of peace; the different categories of armaments (military, naval and air), the methods of recruiting, training, organizations capable of immediate military employment, etc.

Question II.

(*a*) Is it practicable to limit the ultimate war strength of a country, or must any measures of disarmament be confined to the peace strength?

(*b*) What is to be understood by the expression "reduction and limitation of armaments"?

The various forms which reduction or limitation may take in the case of land, sea and air forces: the relative advantages or disadvantages of each of the different forms or methods: for example, the reduction of the larger peace-time units or of their establishment and their equipment, or of any immediately mobilizable forces: the reduction of the length of active service, the reduction of the quantity of military equipment, the reduction of expenditure on national defense, etc.

Question III.

By what standards is it possible to measure the armaments of one country against the armaments of another, e.g., numbers, period of service, equipment expenditure, etc.?

Question IV.

Can there be said to be "offensive" and "defensive" armaments?

Is there any method of ascertaining whether a certain force is organized for purely defensive purposes (no matter what use may be made of it in time of war), or whether, on the contrary, it is established for the purposes in a spirit of aggression?

Question V.

(*a*) On what principle will it be possible to draw up a scale of armaments permissible to the various countries, taking into account particularly:

Population;

Geographical situation;

Length and nature of maritime communications;

Density and character of the railways;

Vulnerability of the frontiers and of the important vital centers near the frontiers;

The time required, varying with different states, to transform peace armaments into war armaments;

The degree of security which, in the event of aggression, a state could receive under the provisions of the Covenant or of separate engagements contracted toward that state?

(*b*) Can the reduction of armaments be promoted by examining possible means for insuring that the mutual assistance, economic and military, contemplated in Art. 16 of the Covenant, shall be brought

quickly into operation as soon as an act of aggression has been committed?

Question VI.

(*a*) Is there any device by which civil and military aircraft can be distinguished for purposes of disarmament? If this is not practicable, how can the value of civil aircraft be computed in estimating the air strength of any country?

(*b*) Is it possible or desirable to apply the conclusions arrived at in (*a*) above to parts of aircraft and aircraft engines?

(*c*) Is it possible to attach military value to commercial fleets in estimating the naval armaments of a country?

Question VII.

Admitting that disarmament depends on security, to what extent is regional disarmament possible in return for regional security? Or is any scheme of disarmament impracticable unless it is general? If regional disarmament is practicable, would it promote or lead up to general disarmament?

Private Manufacture of Arms

The question of a convention for the control of the private manufacture of war material, which was examined in February 1925, was adjourned until it should be possible to judge of the results obtained by the Conference on the Control of the Trade in Arms. This conference having succeeded in drawing up a convention, the final act of which urged that the international aspect of the private manufacture of war material should receive early consideration by Governments, the Sixth Assembly invited the Council to continue its work in this connection. The Council in March[1] had set up a committee of inquiry which had met at Paris on April 21 and drawn up a series of questions which were approved by the Council in December[2] for transmission to the states. The principal questions request information as to:

1. The nature and importance of the "grave objections" from a national or international point of view, to which the private manufacture of arms is open according to Art. VIII, § 5, of the Covenant;

2. The legislative and administrative measures existing in each country on the subject of the private manufacture of war material;

[1] *Official Journal*, VI, p. 554. [2] *Ibid.*, VI, p. 220.

3. The obstacles which the respective constitutions present as regards the conclusion of an international agreement on the subject;

4. Any suggestions the Governments may consider useful.

The Council Committee is preparing a draft convention following the receipt of replies to the questionnaire,[1] which are due by June 1, 1926.

Exercise of Right of Investigation

The treaties of peace closing the World War contain an article in the following terms:

> So long as the present treaty remains in force Germany [Austria, Bulgaria, Hungary] undertakes to give every facility for any investigation which the Council of the League of Nations, acting if need be by majority vote, may consider necessary.

The Council adopted the scheme of organization with a view to the exercise of this right on September 27, 1924.[2] The Council on March 14, 1925, adopted a resolution accepting the report by jurists and representatives of the Permanent Advisory Commission on the ways and means of assuring to members of the commissions the complete execution of their duties. The report[3] is divided into two chapters, the first dealing with the powers of the commissions, the second with the facilities which Governments of countries liable to investigation should grant to the commissions. The commissions of investigation, within the scope of the program, decided upon in each particular case by the Council, shall have the right and the duty to extend their investigations to all matters dealt with in that program. The commissions may proceed to any place in the country where the investigation is in progress, and in the course of any such investigation enter or search any building or premises belonging to the state, to any local or other authority or to a private individual. The commissions shall be entitled to enter or search war or merchant vessels, fortifications and defenses of all kinds and to inspect transport

[1] *Official Journal*, VII, p. 170.

[2] *Ibid.*, V, p. 1592. The document is C. 541 (1). M. 189 (1). 1924. IX, and is also printed separately.

[3] *Ibid.*, VI, p. 610.

material. The commissions may further examine books or documents relating to the transport of goods. The members of the commissions shall enjoy full diplomatic privileges and immunities and shall have the right to complete freedom of movement in the discharge of their duties.

It will be the duty of the Government concerned, on receipt of a notification from the Council, to take all measures to insure that the commission may accomplish its mission to the fullest extent in complete freedom and without encountering resistance, whether active or passive, on the part of any authority or of the local population. The Government concerned shall provide the commission with the legal means for the accomplishment of its duties.

The Council requested the Secretary-General to cause a study to be made as to whether, and if so to what extent, the system set forth in the report would necessitate legislative measures on the part of the countries liable to investigation, and authorized him to notify the four countries concerned (Austria, Bulgaria, Germany and Hungary) of the decision reached with regard to the organization and the right of investigation. On June 10 the Council[1] decided to address to the Austrian, Bulgarian, German and Hungarian Governments a letter expressing its confidence that, should the occasion arise, the stipulations of the peace treaties by which states liable to investigation undertook to give every facility to such effect would be fully carried out.

[1] *Official Journal*, VI, p. 863.

2. MANDATES

[See *Yearbook*, p. 485.]

Several general questions of importance were decided during 1925.

Capital in Mandated Territories. On March 9 and 11 the Council noted the replies of the mandatory states (Australia, Belgium, France, Great Britain, Japan, New Zealand, South Africa) with regard to the question of loans, advances and the investment of private capital in mandated territories. The Council had requested the Governments concerned to express their views on certain questions raised by the Permanent Mandates Commission, which had been impressed by the fact that the mandated territories appeared to suffer from economic disadvantages due to the following circumstances:

> The opinion appears to be held in some quarters that the mandate is revocable, and this, together with the possibility of its voluntary rendition or transfer, is by some regarded as a defect of title which presents an obstacle to the investment of private capital in the country. It may, on the other hand, deter the mandatory power from guaranteeing loans, or advancing large sums for the development of a territory under mandate, without a tangible security which would give it a permanent lien on railways, ports or other works vital to the interests of the territory.

The Permanent Mandates Commission was of the opinion that a pronouncement of the Council tending to dispel this lack of confidence would greatly improve the economic prospects of the mandated territories. The questions raised concerned the right of the mandatory to take a mortgage on works constructed in a mandated area as security for a loan thereon; and the responsibility of a new mandatory in the remote contingency of the transfer of the mandates as regards guaranties for loans and engagements entered into by the retiring mandatory or by a territory under its sovereignty to which the mandated area might be attached.[1]

After further study of the subject in its sixth session the commission prepared a draft decision which was adopted by the Council

[1] *Official Journal*, VI, p. 435, 495.

on September 15. On that date the Council declared that the validity of financial obligations assumed by a mandatory on behalf of a mandated territory in conformity with the provisions of the mandate, and all rights regularly acquired under the mandatory régime, were in no way impaired by the fact that the territory was administered under mandate.

The Council further agreed that the cessation or transfer of a mandate could not take place unless the Council had been assured in advance that the financial obligations regularly assumed by the former mandatory would be carried out and that all rights regularly acquired under its administration would be respected. The Council, moreover, stated that it would continue to use all its influence to insure the fulfilment of such obligations, when the change had taken place.[1]

Application of International Conventions. The Council at its June session requested the Permanent Mandates Commission to consider the replies of the mandatory states to a question concerning the possibility of extending special international treaties and agreements to mandated territories.[2] The commission, after examining the replies, again recommended, as in 1923, that the benefits of past and future treaties concluded by the mandatories should be extended to territories under mandate. The Council recommended with certain reservations that all states which had concluded special treaties or conventions with mandatory states, should agree to the extension of such agreements to mandated territories. It further requested the mandatory states to insert in future agreements a clause providing for the possibility of their extension to mandated territories, and to indicate in annual reports, if possible and expedient, the reasons which may have prevented the application to mandated territories of special agreements concluded during the period covered by the report.[3] The Sixth Assembly passed a resolution commending this action, which is intended to widen the territorial scope of international agreements.

[1] *Official Journal*, VI, p. 1363, 1513.
[2] *Ibid.*, VI, p. 856.
[3] *Ibid.*, VI, p. 1363.

Annual Reports

The Permanent Mandates Commission in its sixth and seventh sessions, June 26–July 10 and October 19–30, examined the reports of mandatory states on all the mandated territories except Syria and Lebanon. In October the commission was sitting when the bombardment of Damascus took place and the unrest in Syria and Lebanon was at its height. In view of the critical situation which had arisen and which was not dealt with in the annual report for 1924 of the French administration, the commission decided to postpone for the time being the examination of the report so that it could form an opinion based on complete knowledge and detailed information with regard to the events of 1925. The commission, accordingly, decided to examine at an extraordinary session in February the report for 1924 and a supplementary report which the French agreed to supply.

The chairman assured the French representative that the commission was following most attentively the position in Syria. It hoped that the supplementary report to be examined in February would furnish full explanations as to the causes of the disturbances and the remedial measures taken by the mandatory and expressed the hope that quiet might shortly be restored within the territory.

Caprivi Zipfel. The Southwest Africa mandate lies on the Atlantic coast of Africa, bounded on the north by Portuguese Angola, on the east by Bechuanaland Protectorate and on the south by the Union of South Africa, which is the mandatory. From the Okavango River on the north border a narrow strip between Angola and Bechuanaland extends eastward to the Zambesi River. This district contains 10,573 square miles and is known as Caprivi Zipfel. Reports had not covered this territory and the attention of this continued omission was called to the attention of the Union of South Africa at the commission's sixth session. A special report on Caprivi Zipfel was available in October. After examining it, the commission asked that the next report should contain fuller information on the population, the administrative staff, tribal organizations, public health services, the budget, and, in particular, on the administrative relations between the Caprivi Zipfel and the mandatory.

Character. The mandated territories are very diverse in development and local conditions. The report on each is a veritable yearbook of information, administrative, social and economic. The examination of the reports brings out extremely detailed and various points for the complete understanding of which familiarity with the local conditions is essential. A review of the commission's examination of the reports is, therefore, not attempted here, but notice of two instances of such examination are given as illustrative of the commission's principal work.

Examination of all reports takes place in the presence of accredited representatives of the mandatory.

In June the commission examined the reports on the administration of Nauru and New Guinea, British Tanganyika, British Togoland, South West Africa, French Togoland and the French Cameroons. In October the commission examined the reports on British Cameroons, Palestine and Transjordania, Ruanda-Urundi, Western Samoa and the Pacific Islands under Japanese mandate.

In October the commission adjourned examination of the report on Iraq, which covered the period from April, 1923, to December, 1924, in view of the dispute in regard to the frontier of Iraq at the moment pending before the Council.

French Togoland. The administrator of French Togoland, M. Bonnecarrère, on request made a general statement on the situation and policy of the French administration. This policy, he said, aimed at educational development, particularly vocational training, and at native cooperation in the administration of the territory. At Lomé the natives were consulted through their Council of Notables as to the establishment of local measures, such as the levy of taxes. In order to develop a sense of property in the native population, the French administration had founded agricultural syndicates, which had promoted the agricultural development of the territory. Cotton, which was introduced in 1923, was being cultivated and exported with satisfactory results. M. Bonnecarrère added that the budget surplus of the last few years, which had been paid into a reserve fund, was not entirely due to taxation, but to the minting of local coinage and to the sale of British currency, in which taxes had been collected in previous years.

The commission noted with satisfaction that in French Togoland as well as in the French Cameroons a new military organization had been established, and that the military forces of these territories were now entirely distinct from those of the neighboring French colonies. It was glad to learn that a change in legislation in order to remove all ambiguity as to the legal status of state lands was under consideration. Divergent views were expressed in the commission concerning the legality and advisability of the tax described as a labor levy, which was imposed in both these territories. The observations of the commission bore on the direct participation of the natives in the general administrative life of the country, the development of vocational and agricultural training, the policy of promoting the moral welfare of the natives by improving their material condition and certain points concerning labor, the liquor traffic and public finance.

Tanganyika. The Hon. W. Ormsby Gore, who presided over the commission sent by the British Government to study conditions in all East African territories under British authority, laid before the commission the information collected during his stay in Tanganyika. This showed that the British administration had in view road and railway construction on a large scale, and intended to encourage agriculture in the territory. The most serious problem was that of the tse-tse fly, whose ravages were enormous in certain parts of the country, many rich and fertile communities having been entirely wiped out. The British authorities had maintained and utilized the native organizations for purposes of administration. Where no such organizations existed, the authorities had endeavored to develop them. Mr. Ormsby Gore drew the attention of the commission to certain difficulties of an administrative character due to the fact that the warlike Masai tribe, on the Kenya-Tanganyika frontier, had reserves on both sides of the frontier, and was thus subject to two different authorities.

The commission thanked the mandatory for sending copies of the report of the East Africa Commission and stated that it would follow with keen interest the measures taken against the tse-tse fly. It noted the difficulties in connection with the Masai tribe and expressed its willingness to examine any proposal made with a view to improving the situation, provided that it did not involve any limitation of the control exercised by the League under the

mandate. The commission also noted with interest that a labor department had been created in the Tanganyika administration, that a working arrangement would be reached between the educational department of the territory and the mission schools, and that the Amani Institute would probably soon be re-opened. Further information was requested on certain questions concerning labor, problems of general administration, slavery and public finance.

Petitions. The commission was in receipt of several petitions from individuals or organizations having complaints to make.

With regard to a petition from burghers of the Rehoboth community, Southwest Africa, which under German rule had had a special statute, the commission considered that there was no ground for proposing special action by the Council. It recommended the petitioners to adopt the course proposed by the administrator.

A petition from the Ashkenasic Community in Jerusalem was directed against certain administrative regulations by which the community is affected, and also against a draft ordinance for the organization of the Jewish communities in Palestine. The commission regretted that the mandatory had not furnished it with any explanations which would enable it to consider the complaint concerning in particular the slaughter of animals, the tax on unleavened bread and the refusal officially to recognize the community. The commission noted the intention expressed by the mandatory not to interfere in any way with the religious freedom and liberty of conscience of the various religious sects and requested that the complaints of the Ashkenasic Community might be promptly examined by the responsible authorities. As regards the proposed ordinance concerning the future legal status of Jewish communities in Palestine, the commission noted a statement of the mandatory that it was prepared to consider the wishes of the Ashkenasic Community.

The Executive Committee of the Palestine Arab Congress submitted two petitions, dated April 8 and April 12. The first, contesting the very principle of the Palestine mandate, was not taken into consideration by the commission. As regards the second, the commission doubted whether it could make an adequate recommendation on the sole basis of the written documents, even

if these were examined with the assistance of the accredited representative of the mandatory against whom the petitioners felt they had cause for complaint. In view of this difficulty and of the information received that further petitions from the same source would be forthcoming, the commission postponed its decision.

A letter and memoranda from the Zionist Organization on the development of the Jewish national home contained three definite complaints and much information, which called for no comment. The complaint on the uncertain position in which the Zionist Organization was placed by the present regulations regarding petitions was replied to by the commission in a statement [1] defining its point of view as regards this question. A second complaint bore on the fact that Art. 6 of the Palestine mandate had not so far been effectively applied (Art. 6 provides for the settlement of Jews on the land, including state and waste land not required for public purposes). Although the commission stated that it could not recommend the allocation to Jewish immigrants of land already held by the native population, it expressed its conviction that the mandatory would do its utmost to give effect to Art. 6 as soon as circumstances permitted. With regard to a complaint that only 3% of the sum set aside from funds appropriated for education had been used to subsidize Jewish schools in Palestine, the commission expressed the opinion that the explanation given on this subject by the mandatory was sufficient.

A number of petitions and protests concerning the administration of Syria were received by the commission and, in accordance with the usual procedure, communicated to the mandatories for observations. The petitions were examined in February, 1926.

[1] *Official Journal*, IV, p. 298–300.

Slavery Commission

[See *Yearbook*, p. 493.]

The Temporary Slavery Commission closed its work at its second session held at Geneva, July 13–25.[1] In accordance with the program drawn up at its foregoing session which had been approved by the Fifth Assembly, the commission prepared a report on the question of slavery as a whole, utilizing information supplied by Governments, notes submitted by organizations or persons in accordance with the required procedure and the personal experience and knowledge of members of the commission.

The commission noted in its report that certain Moslem countries, whose reports would have been of special interest, had not replied to the questionnaire. Most of the information from private sources arrived too late to be adequately dealt with. It expressed nevertheless, its gratitude to the authors. The report of the commission, containing suggestions to be submitted to the Council, showed the various aspects of the alienation or restriction of individual freedom, and recommended practical measures for joint action. The complicated social problem involved is shown by the headings of the report:[2]

I. *Status and Legal Status of Slavery* — Abolition of the legal status of slavery; transitional measures to be recommended to the Government of Abyssinia; conditions to which states desirous of entering the League must subscribe.

II. *Slave Raiding and Similar Acts* — Right of pursuit across inland frontiers; infliction of the severest penalties on persons who have taken part in a raid or in the transport of slaves.

[1] The members of the commission attending were: Louis-Dante Bellegarde (Haiti), formerly minister of Haiti in France; M. Delafosse (France), formerly governor of the French colonies; M. Freire d'Andrade (Portugal), formerly minister for foreign affairs, member of the Permanent Mandates Commission; M. Gohr (Belgium), director general of the Belgian colonial ministry; H. A. Grimshaw, Representative of the International Labor Organization; Sir Frederick D. Lugard (Great Britain), formerly governor of Nigeria, member of the Permanent Mandates Commission; H. van Rees (Netherlands), formerly chairman of the Council of the Dutch East Indies, vice-chairman of the Permanent Mandates Commission; Commander Roncagli (Italy), secretary-general of the Italian Geographical Society.

[2] Temporary Slavery Commission. *Minutes of the Second Session* (C. 426. M. 157. 1925. VI).

III. *Slave Trade* — Exchange of views between Abyssinia and the neighboring states; cooperation of Egypt; right of pursuit and capture in territorial waters of the Red Sea; possibility of inducing states which were formerly part of the Turkish Empire to adopt measures not less liberal than those taken by Turkey, especially the right of asylum; various measures for supervision and control with regard to pilgrims and attendants traveling to the Hejaz; repatriation of freed slaves and creation of a transit depot; centralization of information concerning the origin, destination and transport of freed slaves; right of pursuit in territorial waters other than the Red Sea; transport of slaves by sea to be regarded as an act of piracy.

IV. *Slave-Dealing* — Transfer by exchange, sale, gift or inheritance.

V. *Practices Restrictive of the Liberty of the Person* — Powers to be conferred on the courts enabling them to repress abuses; legislation for the suppression of the abuses of peonage.

VI. *Domestic or Prædial Slavery (Serfdom)* — Nonrecognition of the legal status of serfs or domestic or prædial slaves.

VII. *Compulsory Labor, Public, Private, Paid or Unpaid* — Prohibition of forced or compulsory labor, except for public works and services, and under conditions of inadequate remuneration; precautions to be observed by the authorities in the recruitment of labor.

VIII. *Transition from Servile or Compulsory Labor to Free Wage Labor or Independent Production* — Encouragement of peasant proprietors and permanent crops; measures to be taken to render wage labor attractive; the use of currency to be made most general and wages to be paid in cash; education adopted to the circumstances of the people and participation of the natives in the conduct of their own affairs and in the enterprises of nonnatives.

The majority of the commission believed that it would be desirable to adopt an international convention giving effect to those recommendations requiring international agreement. In the Sixth Assembly the Sixth Committee, on the suggestion of the British Government, drew up a convention, which it decided should be forwarded to the Governments, which would be asked to consider it, and it was hoped that they would be prepared to state their decision definitely with regard to it at the next Assembly and give their representatives full power to sign it with or without amendment.

Proposals of the Norwegian delegation concerning (1) reference to the Permanent Court of International Justice of disputes as to the interpretation and application of the convention and

(2) reports to be made annually to the League on the execution of the convention were postponed for consideration at the 1926 Assembly.

The Council on September 28,[1] decided to communicate the draft convention to the Members of the League and to Afghanistan, Ecuador, Egypt, Germany, Mexico, Russia, the Sudan, Turkey and the United States of America, requesting them to forward to the Secretary-General, not later than June 1, 1926, any observations they might desire to make with regard to the draft. States were further urged to make every effort to adopt forthwith all possible measures in conformity with the convention, and to assist one another in the abolition of the slave trade, slavery and analogous conditions by all practicable means and, in particular, by the conclusion of special agreements. The draft convention reads:[2]

Whereas the signatories of the General Act of the Brussels Conference of 1889–90 declared that they were equally animated by the firm intention of putting an end to the traffic in African slaves;

Whereas the signatories of the convention of Saint-Germain-en-Laye of 1919 to revise the General Act of Berlin of 1885 and the General Act and Declaration of Brussels of 1890, affirmed their intention of securing the complete suppression of slavery in all its forms and of the slave trade by land and sea;

Desiring to complete and extend the work accomplished under the Brussels act and to find a means of giving practical effect throughout the world to such intentions as were expressed in regard to slave trade and slavery by the signatories of the convention of Saint-Germain-en-Laye:

Have decided to conclude a convention and have accordingly appointed as their plenipotentiaries:

. . . . . .

Who, having communicated their full powers, have agreed as follows:

Art. 1. For the purposes of the present convention, the following definitions are agreed upon:

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging

[1] *Official Journal*, VI, p. 1401.

[2] *Resolutions . . . adopted by the Assembly during its Sixth Session*, p. 30.

him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

Art. 2. The high contracting parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection or tutelage, so far as they have not already taken the necessary steps:

(*a*) To prevent and suppress the slave trade;

(*b*) To bring about progressively and as soon as possible the disappearance of slavery in every form, notably in the case of domestic slavery and similar conditions.

Art. 3. The high contracting parties undertake to adopt all appropriate measures with a view to preventing and suppressing the embarkation, disembarkation and transport of slaves in their territorial waters and upon all vessels flying their respective flags.

The high contracting parties further recognize the value of separate agreements between the powers concerned conferring on their warships, in certain zones in which they may consider the existence of traffic in slaves to be a possibility, special rights enabling them to prevent and suppress the said traffic on vessels flying the flag of any of the powers which are parties to such agreements. The high contracting parties undertake to communicate to each other agreements which may be concluded for this purpose.

Art. 4. The high contracting parties shall give to one another every assistance with the object of securing the abolition of slavery and the slave trade.

Art. 5. Those of the high contracting parties whose laws do not at present make adequate provision for the punishment of infractions of laws and regulations enacted with a view to giving effect to the purposes of the present convention undertake to adopt or to propose for adoption by their respective legislatures the necessary measures in order that severe penalties may be imposed in respect of such infractions.

Art. 6. The high contracting parties recognize that recourse to compulsory or forced labor may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection or tutelage, to take all necessary measures to prevent conditions analogous to those of slavery from resulting from compulsory or forced labor.

It is agreed that:

(1) In principle, compulsory or forced labor may only be exacted for public purposes;

(2) In territories in which compulsory or forced labor for other than public purposes still survives, the high contracting parties shall endeavor progressively and as soon as possible to put an end to the practice. So

long as such forced or compulsory labor exists, this labor shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the laborers from their usual place of residence.

(3) In all cases, the responsibility for any recourse to compulsory or forced labor shall rest with the central authorities of the territories concerned.

Art. 7. The high contracting parties undertake to communicate to each other and to the Secretary-General of the League of Nations any laws and regulations which they may enact with a view to the application of the provisions of the present convention.

Art. 8. All the provisions of international conventions of a general character anterior to the date of the present convention shall be regarded as abrogated, in so far as they relate to matters dealt with in the present convention and bind in their relations with each other the powers which are parties to the said convention.

Art. 9. Any of the high contracting parties may declare that its signature, ratification or adhesion shall not be binding as regards the enforcement of the provisions of certain of the articles of this convention either upon the whole or upon any of the territories placed under its sovereignty, jurisdiction or protection.

Any high contracting party which has made such a declaration may subsequently, and in conformity with the provisions of Art. 10, adhere unreservedly to the present convention in respect of any of the excluded territories; it shall endeavor to insure such adhesion with the least possible delay in respect of all the excluded territories.

Art. 10. The high contracting parties shall make every effort to induce other states to adhere to the present convention.

Such adhesion shall be notified to the Secretary-General of the League of Nations and through him to all the signatory or adherent states.

Art. 11. The present convention, the French and English texts of which shall both be deemed authentic, shall be ratified. It shall bear this day's date.

The instruments of ratification shall be deposited at the office of the Secretary-General of the League of Nations, who shall immediately notify the signatory or adherent powers of such deposit.

The convention shall come into force in respect of each signatory power three months after the date on which such power has deposited its ratification.

III. COOPERATION OF STATES UNDER THE COVENANT

[See *Yearbook*, p. 494.]

1. HEALTH ORGANIZATION

The Health Committee met for its fourth session at Geneva, April 20–25, and for its fifth session at Geneva, October 8–14.

Probably the activity of widest interest in its work is the Epidemiological Intelligence Service, which was organized in 1922 as the result of an annual grant of $32,060 per year for five years from the International Health Board of the Rockefeller Foundation. Edgar Sydenstricker, chief statistician of the United States Public Health Service, was given leave of absence to organize the work. He was succeeded by Dr. Otto R. Eichel, director of the Bureau of Vital Statistics of New York, who died after serving about nine months as director. He was succeeded as chief of the service by Dr. F. Norman White, with whom is associated Dr. Frank G. Boudreau, director of the Bureau of Communicable Diseases of the Ohio Department of Health.

The service issues a *Monthly Epidemiological Report*, annual summaries on notifiable diseases, a series of handbooks of official vital statistics for each country and plays a large part in the preparation of the *International Health Yearbook*. The program includes important studies on statistical procedure and the comparability of health statistics.

Epidemiological Service

The Singapore Conference for the inauguration of the Far Eastern Epidemiological Intelligence Bureau, met February 4–13, and was attended by delegates from the health administrations of British North Borneo, Ceylon, China, Dutch East Indies, Federated Malay States, French Indo-China, Hongkong, India, Japan, the Philippine Islands and the Straits Settlements. The League was represented by Dr. Norman White of the League Epidemics Commission.

Subject to the approval of the Governments concerned, the conference made provision for telegraphic notification to the Bureau of the first appearance in any port in Asia, east of Suez, or in Australasia, of cholera, plague, smallpox, yellow fever or other infectious diseases, of the total of deaths from plague, cholera or smallpox in important ports, of instances of rat-plague and particulars of any unusual epidemics in the countries interested. The conference further decided that weekly letters should be sent to the bureau giving relevant supplementary information including reports from ports of secondary importance. Regular reports are had from Camaran, El Tor, Jeddah and Mecca during the annual pilgrimages, as well as regular information from Egypt and the east coast of Africa as far south as Cape Town. The bureau telegraphs to all Far Eastern Governments and the Health Section at Geneva a weekly summary of all telegraphic information received. It confirms its weekly telegram by a leaflet in which health news from any source of interest to eastern countries will be incorporated, and will issue monthly and annual publications.

Dr. Gilbert Brooks of the Straits Settlements' Medical Service, is director. The first bulletin was broadcast on April 4. The International Health Board of the Rockefeller Foundation furnished for establishing this office a total sum of $125,000 for five years, of which not more than $50,000 may be spent in any one year.

Interchange of Public Health Personnel

The Rockefeller Foundation grant toward this activity, which aims to familiarize health officials with what is being done in other countries, was $100,000 for the year 1925.

The third interchange of public health officials in Great Britain opened in London on February 8, when 15 medical officers from Canada, Denmark, Esthonia, France, Germany, Greece, Italy, Netherlands, Norway, Poland, Russia, the Serb-Croat-Slovene State and the United States were officially welcomed by the Society of Medical Officers of Health. This interchange was divided into three periods. The first month was devoted to the study of central and local health administration in urban and rural areas outside London (Middlesex, Yorkshire and Staffordshire), on the following points: housing, sanitation, food inspection, industrial

and school hygiene, the control and notification of diseases, maternity, child welfare and nursing arrangements, vital statistics and panel practice. The second period, of a fortnight, comprised a course of lectures in London and visits to the principal institutions connected with the central health administration and the port of London. The third and final stage, of four days, closed at Geneva on March 28, with a course of lectures on the Health Organization.

The Latin American interchange began in March and continued into the month of August. The 10 participants were drawn from the health services of the Argentine Republic, Brazil, Costa Rica, Cuba, Mexico, Paraguay, Peru, Salvador, Uruguay and Venezuela. The interchange began in Cuba and continued in the United States, Canada and Great Britain, where the general working of the health services was studied. The members then passed through the Netherlands, where vital statistics and housing were studied, Belgium (system of dispensaries and housing), and Geneva, where they heard lectures on the constitution of the League and the working of the Health Organization. After the discussions at Geneva the members proceeded to various Swiss centers (vital statistics and social insurance), thence to France (anti-tuberculosis and child welfare), and finally to Italy to study anti-malarial missions.

The first interchange of specialists in industrial hygiene began on March 23 at Geneva, attended by ten specialists — mostly labor inspectors — from Belgium, France, Great Britain, Czechoslovakia, Holland, Japan, Poland, Russia, Serb-Croat-Slovene State and the United States. The Geneva stage included lectures at the League Secretariat and the International Labor Office on subjects of special interest to the participants. The specialists left Geneva on March 28 for a tour in Belgium, France, Great Britain and the Netherlands, where they studied on the spot the methods of hygiene in use in the industries of these countries.

The fourth general interchange of public health officials took place in Belgium from May 4 to June 19. The course included a series of lectures on the geological, geographic, and climatic conditions of Belgium; on the development of social institutions, public assistance, and vital statistics; on sanitary organizations and legislation and on the protection of children. It began at

Brussels and was completed by visits to public health institutions in the provinces — Brabant, Antwerp, Flanders, Namur and Liège — and in the districts of Mons and Charleroi. The interchange came to an end at Geneva on June 26 with a series of lectures on the League and the Health Organization. Health officers from Austria, Denmark, the Free City of Danzig, Spain, France, Great Britain, Ireland, Italy, Poland, Portugal, Russia, the Serb-Croat-Slovene State and Switzerland took part.

The fifth general interchange of medical officers, which began on May 17 in the Serb-Croat-Slovene State, ended with final conferences on July 6–8 in Geneva. The participants were accompanied by Dr. A. Stampar, director of health services in the Serb-Croat-Slovene State, under whose patronage the interchange took place. A certain number of general conferences were held with the members of the Latin American Interchange, who were in Geneva at the same time. Health officers from Germany, Belgium, Bulgaria, France, Great Britain, Greece, Hungary, Palestine, Poland, Russia, Czechoslovakia and the United States took part.

The Japanese interchange began at Tokyo on October 18 and ended at Dairen on December 4, 17 medical officers participating from Australia, British India, China, Dutch East Indies, Federated Malay States, Hong Kong, Indo-China, New Zealand, Philippines, Russia and Straits Settlements.

The first interchange of port medical officers which began on November 10 at Barcelona marked a further development of the specialist interchanges organized as part of the general system of interchanges. The participants visited a number of Mediterranean ports, namely, Barcelona, Marseilles, Algiers, Genoa, Naples, Haifa, Alexandria, the Piræus, Trieste, Suez and El Tor. Port medical officers from the health administrations of Algeria, France, Great Britain, Greece, Italy and the Serb-Croat-Slovene State took part, studying port sanitary administration, quarantine regulations, the receipt, collection and dispatch of epidemiological intelligence and similar subjects. The interchange terminated at Geneva at the end of December with a general discussion on the information gained together with a study of the League Health Organization.

Subjects Studied

Sleeping Sickness. An International Conference on Sleeping Sickness in Equatorial Africa, convened by the Council on the recommendation of the Health Committee, met in London May 19–22, with representatives of the British Empire, France, Italy, Spain, Belgium, and Portugal. The Health Organization was represented by Dr. Ludwik Rajchman. The preliminary work on sleeping sickness had been carried out by an expert committee appointed by the Health Committee in 1922 to study sleeping sickness and tuberculosis in Equatorial Africa. The expert committee, in its reports, recommended administrative and technical measures to combat the scourge, whereupon the Council, in December, 1924, invited the interested Governments to meet in conference.

As regards questions of administration, the conference recommended that there should be periodical meetings between administrative and medical officers on both sides of the frontiers of infected territories; rapid and regular interchange of all epidemiological intelligence; a medical and health service proportionate to the numbers of the infected population and to the extent of the districts to be inspected; magisterial powers for medical officers in infected areas; the institution of a uniform system of sanitary passports for the native population in areas infected with the tse-tse fly in order to reduce interfrontier traffic to a minimum; and the establishment, wherever practicable, of uninhabited zones on both sides of frontiers, in order to facilitate the control of native traffic. As regards special studies and investigations, the conference recommended that an International Commission should proceed to Equatorial Africa to investigate certain questions relating to the various forms of the disease, propagation and immunity, and curative methods. The conference selected Uganda and the regions round Lake Victoria as being best suited for the study of these problems, and the Government of Uganda offered for one year the hospitality of its laboratories at Entebbe for the work of such a commission. Dr. H. L. Duke is president of the commission. The Belgian, British, French and Spanish Governments are contributing to this work.

Mortality Statistics. The third international study of medical statisticians arranged by the League came to an end on August 28 at Geneva.

The course began on July 28 and was attended by officials from Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Italy, Norway, Sweden, Switzerland, and United States. The participants visited Copenhagen, Stockholm, Oslo, Edinburgh, The Hague, London and Bern, studying and comparing on the spot the various methods of compiling statistics of causes of death. Decisions were taken with a view to improving and rendering comparable mortality statistics in the different countries.

Malaria. The Health Committee at its fifth session adopted the report and resolutions of its Malaria Commission taken at its meeting March 23–26. It decided to transmit to the French Government the report on malaria in Corsica, suggesting methods of conducting an effective campaign against this disease, and also that the commission should be kept informed by reports of the progress made in Corsica. The commission had practically completed its investigations into the prevalence of malaria in Eastern Europe and the Mediterranean basin, but felt it necessary to undertake a collective study tour in Sicily and to carry on detailed investigations in some of the southern states of the United States of America, for the purpose of studying anti-larval measures and Bass's experiments on the exclusive use of quinine. Particular subjects to be investigated included the relationship of river deltas to endemic malaria, the influence of rice fields in Europe, the rôle of animals, the results of drainage measures, of measures directed against adult mosquitoes and against larvæ, conditions under which mosquitoes become infected, the value of the secondary alkaloids of cinchona as a substitute for quinine, etc. These recommendations for future work were adopted.

Cancer. The Cancer Commission is confining itself to the investigation of the specific problem of the difference in cancer mortality in various countries. The cancer mortality in certain cases, for example, is twice as great in England as in Italy. Future investigations comprise work in the United States and Switzerland under the direction of the national health authorities.

Proposals for Further Work. Eight Governments made proposals to the Assembly concerning further work for the Health Organization, which were transmitted by the Council to the Committee for study. In practically every case the committee appointed members to investigate and report on what could be done. Thus the Czechoslovak proposal for a comparative study of the most economic, practical and efficient methods of public health administration, in relation to national health insurance, led to a decision that use should be made of the publications regarding national health services being prepared under the auspices of the Health Organization and that a preliminary study of systems of social insurance against disease in different countries should be undertaken after consultation with the Czechoslovak authorities and with the International Labor Office. A preliminary report is to be prepared on the prevalence of trachoma and on the measures adopted in various countries for its prevention, in response to a proposal of the Italian delegation. Similar procedure was adopted with regard to a proposal of the Serb-Croat-Slovene Government as to the desirability of investigating the manufacture and distribution of food supplies in the interests of national public health, the Dutch proposal to take up the question of infantile mortality, and a proposal of the French delegation for the setting up of a sanitary and epidemiological bureau on the West Coast of Africa in view of the gravity and prevalence of endemic and epidemic diseases in this part of the world and the resulting international danger.

Proposals submitted by the Latin American delegations to the Assembly were considered in conjunction with a report by Prof. Léon Bernard of the Health Committee, who had made an official voyage in Brazil, Argentine and Uruguay, for the purpose of studying certain aspects of the health services of these countries and strengthening cooperation between the Organization and Latin American members of the League. The Brazilian and Argentine Health services have decided to set up special bureaus within their health administrations for insuring cooperation, as has already been done by the Governments of Czechoslovakia and Rumania. The Health Committee welcomed the extension of this procedure, and expressed its appreciation of a Venezuelan proposal to this effect. In response to a

proposal by Paraguay that an expert medical statistician should be sent to certain countries to help secure international comparability of vital statistics, the committee requested its medical director to keep in touch with interested countries, study any specific requests and take action where necessity arose. The Cuban suggestion for interchanges of technical personnel between certain institutes of tropical medicine in Latin America was adopted.

2. ECONOMIC AND FINANCIAL ORGANIZATION

[See *Yearbook*, p. 510.]

Economic Committee

The Economic Committee held meetings during 1925 as follows:

14. Geneva, January 28–31.[1]
15. Geneva, May 26–June 3.[2]
16. Geneva, August 31–September 5.[3]
17. Geneva, November 30–December 4.[4]

During 1925 the committee's program had included the following subjects: import and export prohibitions and restrictions; treatment of foreign nationals and enterprises; unfair competition; economic crises and unemployment; unification of methods in economic statistics; customs formalities; false customs declarations; commercial arbitration; bills of exchange; collaboration with the International Parliamentary Conference on Commerce; protection of the consumer against worthless goods. For the execution of its program, the committee had worked in cooperation with the International Labor Organization, the Financial Committee, the International Chamber of Commerce, the International Institute of Statistics and other bodies.

The committee considered that cooperation with the International Parliamentary Conference would be a source of useful particulars regarding the work of the latter body and of valuable information for the committee's own studies. It was suggested, furthermore, that the International Parliamentary Conference could be of great assistance in giving practical effect to the work of the committee by using its influence in parliaments to obtain the enforcement of international agreements drawn up by the committee. This, the committee felt, would apply in particular to the protocol on arbitration clauses in commercial contracts. The committee's suggestion was approved by the Council on September 15.[5]

[1] *Official Journal*, VI, p. 515; also separately (C. 42 (1). M. 60).
[2] *Ibid.*, VI, p. 954; also separately (C. 309. M. 114. 1925. II).
[3] *Ibid.*, VI, p. 1503.
[4] *Ibid.*, VII, p. 235; separately (C. 727, 1925. II).
[5] *Ibid.*, VI, p. 1362, 1508.

Unfair Competition. The study of this subject by the Economic Committee as a detail of realizing the provision of Art. 23 (*e*) of the Covenant to secure and maintain equitable treatment of commerce illustrates a method of accomplishing results which may be followed in other instances. The Paris convention on the protection of industrial property signed on March 20, 1883, modified by the Brussels act of December 14, 1900, and at Washington, June 2, 1911, contained in the last revision provisions establishing authentic trade-marks and the following:

Art. 10.[1] The provisions (prohibiting commerce in products illegally trade-marked) shall be applicable to any product bearing falsely, as indication of place of production, the name of a definite locality, when this indication shall be joined to a fictitious or borrowed trade name with an intention to defraud.

The interested party is considered any producer, manufacturer or merchant, engaged in the production, manufacture or commerce of such product, and established either in the locality falsely indicated as place of production or in the region where this locality is situated.

Art. 10½. All the contracting countries agreed to assure to the members of the Union (for the protection of industrial property) an effective protection against unfair competition.

The Economic Committee studied the whole problem and was able to reach definite conclusions, which were given the form of articles to be inserted in the convention on the protection of industrial property as revised at Washington. At the invitation of the Netherlands Government two members of the Economic Committee Julio A. Barboza Carneiro (Brazil) and Jules Brunet (Belgium) took part in an advisory capacity in the conference which met at The Hague, from October 8 to November 6, in order to revise the convention. The Council had communicated the committee's suggestions to all states belonging to the Union for the Protection of Industrial Property and expressed the hope that the members of the League would instruct their delegates to The Hague conference to support the amendments proposed by the Economic Committee.

The Convention. The conference incorporated the proposals of the Economic Committee in the text of the convention with a

[1] *Treaties, Conventions, etc., between the United States of America and other Powers, 1910–1923*, III, p. 2959.

few drafting changes. They concern several articles of the convention. Art. 6 states that any hall-mark or trade-mark which has been duly registered in its country of origin will be admitted for registration and protection without any further formalities in other countries belonging to the Union. Exceptions are, however, contemplated, which will make it possible in certain specific cases to refuse or to cancel registration. In the new Art. 6*bis* the conference adopted a suggestion of the Economic Committee that refusal or cancellation of the registration of a trade-mark known as a mark owned by a national of another state should be compulsory. A period of three years is allowed in which to apply for the cancellation of trade-marks registered in spite of this provision; but this cancellation may be obtained at any time if registration was made in bad faith. Similarly the conference adopted an Art. 6*ter* which, in accordance with the proposal of the Economic Committee, regulates the conditions for using as trade-marks national emblems, arms or flags, official hall-marks or signs indicating official warranty adopted by states members of the Union.

Art. 10*bis*, which deals particularly with unfair competition, aims at various improvements considered desirable by the Economic Committee. The text is as follows:

> The contracting states undertake to assure to the nationals of states belonging to the Union effective protection against unfair competition. Any act contrary to honest industrial or commercial practice constitutes an act of unfair competition. In particular, the following shall be prohibited:
>
> (1) Any acts whatsoever likely to create confusion with the products of a competitor;
>
> (2) False statements in the course of trade likely to discredit the goods of a competitor.

In the new Art. 10*ter* the conference again took account of the proposals of the Economic Committee and adopted the following provisions:

> The contracting parties undertake to insure to nationals of state members of the Union appropriate legal redress for the effective repression of all the acts referred to in Arts. 9, 10 and 10*bis*.
>
> They furthermore undertake to adopt measures to enable syndicates or associations representing the industry or trade concerned, and whose

existence is not contrary to the laws of the country, to institute proceedings in the courts, or apply to the administrative authorities, for the repression of the acts contemplated by Arts. 9, 10 and 10*bis* in so far as the law of the country in which protection is claimed grants protection to the syndicates and associations of the country.

Economic Crises and Unemployment. The Economic Committee undertook the examination of this question in compliance with a request of the International Labor Organization. The special Joint Committee appointed for this purpose and presided over by M. Heer (Swiss), is composed of members of the Economic Committee and experts nominated by the International Labor Office, to which members of the Financial Committee were added at the June session.

The committee on January 26 and 27 examined the question of economic barometers and the possibility of developing and extending their use. The committee also considered a resolution of the Fourth International Labor Conference, inviting it to investigate various factors, such as credit, instability of prices, and exchange fluctuations, which might prevent the parallel and regular development of demand and supply and thus decrease the stability of employment. The committee embodied its conclusions in a report which was indorsed by the Economic Committee as follows:[1]

A. 1. That, in view of the great importance of the systematic publication of economic barometers for various countries, the Secretariat be instructed to continue the negotiations with certain nonofficial organizations in order to ascertain the conditions under which permission might be obtained for the publication of a limited number of series.

2. That the desirability of preparing indices suitable for their national conditions on a scientific standard equal to that set by the Harvard University Committee of Economic Research and the London and Cambridge Economic Service be suggested to those states for which economic barometers are not at present available.

3. That the technical services of the Secretariat and of the Labor Office continue to collaborate in the study and development of the various forms of economic barometers, including the question of their international comparability.

[1] *Official Journal*, VI, p. 518.

B. 1. The Joint Committee has given consideration to certain matters submitted to it by the Director of the International Labor Office under the terms of the resolution of the Fifth Labor Conference reproduced above.

2. The committee considers that it is proved beyond doubt that excessive fluctuations in trade activity as manifested in recent cyclical movements are highly prejudicial to stability of employment, and that it would be very desirable if possible to diminish the intensity of such fluctuations.

3. The committee also considers that, especially in certain phases of the upward movement of the cycle of trade, the principles on which credit facilities are accorded to industry and trade may be an important factor in accentuating or checking the fluctuation.

4. The committee is consequently of opinion that the evils caused to employment by excessive trade fluctuations might to some extent be mitigated if, in arriving at decisions governing credit policy, especially in the circumstances above alluded to, due regard were invariably paid to all data as to relevant economic conditions, including the tendencies of employment and prices.

5. The committee therefore attaches great importance both to the improvement and extension of the data available, including various indices of economic conditions, and also to their wider diffusion and more general use by financial and other institutions determining or influencing credit policy. In this connection, it refers to the resolutions already arrived at with regard to economic barometers.

6. The Joint Committee considers that the solution of the financial and monetary questions involved in the memoranda submitted to it is outside the competence of either of the bodies at present represented on the Joint Committee. It therefore decides to request the Economic Committee to transmit the memoranda, together with these resolutions and the minutes of the discussions, to the Financial Committee of the League of Nations, with a request that it will favor the committee with its observations thereon and at the same time to extend to the Financial Committee a cordial invitation to nominate some of its members to take part in subsequent discussions of these questions by the Joint Committee.

7. The above resolutions are without prejudice to the further consideration by the Joint Committee of other causes and aspects of economic crises.

The Joint Committee met at Geneva on June 2 and 3. The committee considered the question of the stabilization of prices, this being an essential condition of the regularity of economic life and the stability of employment, and decided to make a de-

tailed study of two factors which, in its opinion, played an important part in this connection, namely, the influence of the credit policy of financial institutions and that of the economic policy of Governments. The committee further considered the possibility of seeking expert advice as to the means of developing, extending and improving the use of economic barometers. It reiterated its January resolutions B 2–5, and recalled and adopted the resolutions of the International Economic Conference of Genoa as sound principles. It decided to pursue its investigations into the following problems:

(*i*) What financial and monetary measures, other than credit control, are likely to mitigate the intensity of economic crises?

(*ii*) Considering that, in order to guarantee all the elasticity desired to the credit policy, the existence of adequate metallic reserves must be assured, what are the best means of avoiding, in the course of the process of reestablishing the gold standard, an excessive demand for this metal?

Import and Export Prohibitions and Restrictions. The Sixth Assembly expressed "the hope that the draft agreement drawn up by the Economic Committee as a basis of further discussion may receive from the Governments interested all the consideration due to a problem the solution of which would contribute in large measure to the improvement of international commercial relations."

The agreement referred to had taken shape during the 14th and 15th sessions of the committee, during the former of which the subcommittee on the Equitable Treatment of Commerce, presided over by Sir Hubert Llewellyn Smith, examined the observations of 21 Governments with regard to this question. During the 15th session the committee examined the considerable material collected as a result of a circular addressed by the Secretariat to the different Governments, supplemented by the personal investigations of the members of the committee. Recognizing that, from a practical point of view, the problem was of special interest for eastern and central European states, the committee invited the Austrian, German, Hungarian and Serb-Croat-Slovene Governments to appoint experts to assist it in its deliberations. The committee considered that there was sufficient consensus of opin-

ion in favor of abolishing or reducing to a minimum the system of import and export prohibitions to warrant preparatory steps with a view to international action in accordance with the provisions of the Covenant with regard to the equitable treatment of commerce. The committee elaborated the draft agreement commended by the Sixth Assembly at its 16th session.[1]

False Customs Declarations. The Economic Committee appointed a special committee of six members to examine a draft prepared by M. Barboza Carneiro in view of an international agreement for the suppression of false customs declarations. The draft provides,[2] *inter alia*, that an importing country shall be entitled to require the Government of the exporting country to take proceedings against a trader making a false declaration to the authorities of the importing country. This question calls for exhaustive legal investigation. The special committee examined the various categories of acts constituting offenses and has proceeded, in collaboration with the Legal Section of the Secretariat, to consider the juridical aspects of the question.

Treatment of Foreign Nationals. The committee had already examined at earlier sessions the question of the taxation of foreign nationals and enterprises. At its May session it made a special study of the rights to be granted to foreigners as regards the exercise of a profession, trade or other occupation. A certain number of principles and regulations were drafted for submission to the Council, in the form of recommendations. The committee was of opinion that, in general, persons exercising a profession or trade in a foreign country should receive the same treatment as nationals of that country, subject or not to reciprocity in their countries. The number of professions, industries and occupations for which national interests may require restrictions to be imposed on foreigners should be limited to the minimum compatible with the protection of such interests; the same rule should apply to restrictions. The committee recommended that discrimination based on the nationality of persons concerned should be avoided.[2]

[1] Text in *Official Journal*, VI, p. 1505.

[2] *Official Journal*, VI, p. 955.

The Council in June decided to communicate to all states Members of the League the findings of the committee, which, in the opinion of the rapporteur, M. Hymans, constituted the second chapter of an international code on the treatment of foreigners, the first chapter being a series of recommendations drawn up by the committee in 1923 with regard to the taxation of foreign nationals and enterprises.[1]

The Sixth Assembly dealt with this subject in a resolution which

> Declares that the Economic Committee, as a result of the systematic pursuit of its study, has established a series of principles the application of which would insure an equitable treatment of foreigners in regard to their admission to the exercise of professions, industries and occupations;
>
> Expresses the hope that states may be guided by this body of principles both in regard to their national legislation and in the negotiation of bilateral agreements.

Preparatory Committee on Statistics. The Council at its 28th session[2] approved the proposal put forward by the Economic Committee that the scheme of cooperation with the International Institute of Statistics on the subject of the unification of methods in economic statistics, initiated at the end of 1922, should be continued, and that a new program covering industrial statistics should be submitted to the Preparatory Committee on Statistics engaged upon the work. This preparatory committee has dealt with the various problems submitted to it in the new program, and drew up a number of reports for submission to the International Institute of Statistics at its meeting in September, 1925. The Economic Committee recommended that the system of cooperation should be continued during the year 1926 and that this committee be requested to continue its study of the outstanding questions of the existing program.

The Preparatory Committee on Statistics met at Rome on October 6 when it considered its program for 1926 and divided

[1] *Official Journal*, VI, p. 878.

[2] *Ibid.*, V, p. 555.

the work among its members. The committee is composed as follows:

M. Delatour (French);
A. W. Flux (British);
Dr. Hanosek (Czechoslovak);
Adolf Jensen (Danish);
Dr. Julin (Belgian);
A. Loveday (League of Nations);
Lucien March (French);
Dr. Mataja (Austrian);
Dr. Methorst (Dutch);
Eugène Neculcea (Rumanian);
Dr. Karl Pribram (International Labor Office);
Sir Henry Rew (British);
Professor Ricci (Italian);
M. Simiand (French);
Prof. Verrijn Stuart (Dutch);
Professor Wurzburger (German).

Pursuing its studies with a view to coordinating methods to be recommended in the compilation of economic statistics, the committee decided to extend its inquiry to all industrial statistics other than the census of production, mineral statistics and agricultural statistics. Each member of the committee was requested to prepare a report on the methods employed in compiling industrial statistics in his own country and in its self-governing dominions, colonies and dependencies. It was also decided that arrangements should be made for obtaining a similar report from the United States of America. With regard to the problem of the statistics of stocks, the committee came to the conclusion that the reports of the individual members should contain a section relating to the existing statistics of stocks in their respective countries, including dominions, colonies and dependencies. Two subcommittees were formed to draft special reports on the statistics of stocks of cereals, alcohol and sugar, such documents not to be confined to the countries represented by the members of the subcommittee.

General Economic Conference

The Sixth Assembly, on the proposal of the French delegation,[1] invited the Council to consider the expediency of constituting a committee, which, with the assistance of the League's technical organizations and the International Labor Office, would prepare the work for a general economic conference. The delegates were unanimously of the opinion that an attempt to deal with the

[1] The proposal was made at the 11th plenary meeting, examined at the ninth meeting of the Second Committee and adopted at the 15th plenary meeting.

economic problem as a whole was in conformity with the mandate given to the League by Art. 23 of the Covenant. Observations made by the different delegations showed that the proposal was generally considered a most necessary one. It was considered desirable that public opinion should be provided with full and objective information on the subject, in order that the grave nature of the economic difficulties with which most countries were faced and the necessity of finding a remedy for them might be understood. Since it was thought that the questions to be considered ought not to be too limited and fragmentary, and that the work to be undertaken should be given the widest publicity, it did not seem expedient that the task should be intrusted to the technical organizations alone. The Assembly therefore approved the proposal to consider a general conference, and was of opinion that the preparatory measures should be taken with the utmost care and in the most methodical manner. It considered that the details of the preparatory work should be settled by the Council to whose discretion the convocation and program of the conference should be left, due account being taken of the results of the preparatory work.

The British delegation felt that it was also necessary not to prejudice the Council's decision even with regard to the expediency of constituting the preparatory committee. It pointed out that a short delay would have the advantage of giving Governments the time to study the proposal and to obtain the necessary advice in connection with it.

The French delegation declared that, in its view, the decision reached implied that the Council would at its December session consider the expediency of setting up the preparatory committee and that it intended to submit to the Council before that session proposals as to the measures to be taken. As to the program of the conference, the Council would subsequently examine the proposals of the preparatory committee.

The resolution reads:

The Assembly,

Firmly resolved to seek all possible means of establishing peace throughout the world;

Convinced that economic peace will largely contribute to security among the nations;

Persuaded of the necessity of investigating the economic difficulties which stand in the way of the revival of general prosperity and of ascertaining the best means of overcoming these difficulties and of preventing disputes:

Invites the Council to consider at the earliest possible moment the expediency of constituting on a wide basis a preparatory committee which, with the assistance of the technical organizations of the League and the International Labor Office, will prepare the work for an international economic conference.

The convening of this conference under the auspices of the League of Nations shall be a matter for subsequent decision by the Council.

The constitution of the committee was decided by the Council on December 15. The French Government had sent in proposals as to its composition, which were submitted to the Council together with the observations of the Italian Government, the League technical organizations and the International Labor Office.

The Preparatory Committee is composed of experts selected as best fitted by their qualifications and personal experience to prepare the work of the conference, and not of representatives of Governments or organizations. There are about 35 members drawn in part from the League technical organizations and the International Labor Office, and including persons with practical experience in industry, trade and agriculture, economists and representatives of workers and consumers. A special committee of the Council follows the work of the committee, and, if necessary, will advise the latter in the performance of its duties. The committee will arrange for the collection and preparation of such economic information as may assist the work of the conference and consider and submit to the Council a report concerning the program, composition, rules of procedure and date of meeting of the conference. Above all, it considers to what extent the present economic difficulties are international difficulties, and endeavors to discover points in respect of which practical solutions might be contemplated, together with the appropriate methods of giving effect to these solutions. It may institute inquiries, seek expert advice, and set up committees of specialists in the various branches of economic production.[1]

[1] *Official Journal*, VI, p. 185, 238, 358.

Financial Committee

The committee met during 1925 as follows:

17. Geneva, February 6–13.[1]
18. Geneva, June 4–8.[2]
19. Geneva, September 2–9.[3]
20. Geneva, December 3–8.[4]

The Financial Committee, beside continuing its work in connection with the Austrian and Hungarian reconstruction schemes and the settlement of Greek refugees, pursued its examination of the question of double taxation, cooperated with the Free City of Danzig in the issue of a municipal loan, and assisted the Esthonian Government in an inquiry into economic and financial conditions in its country.

Double Taxation and Tax Evasion. The experts on double taxation finished their work in February, 1925, the Financial Committee approving the main outlines of their report. The aim is, in the first instance, to decrease or eliminate the *double taxation* which arises when a taxpayer living in one country and drawing part of his income from another country has to pay a tax on that income in both states. The International Chamber of Commerce at its last general conference agreed, subject to a few amendments, to the conclusions. A text exists, therefore, which may be considered as the result of investigations undertaken simultaneously by revenue authorities and by representatives of the great commercial associations of the world.

The Council decided to submit this text to a conference of experts of 13 countries, including Germany and the United States.[5]

The technical experts were: Pasquale d'Aroma (Italy), chairman: Jean Blau (Switzerland); M. Borduge (France); G. B. Canny (Great Britain); M. Clavier (Belgium); J. H. R. Sinninghe-Damste (Netherlands); M. Valnicek (Czechoslovakia).

[1] *Official Journal*, VI, p. 520; separately (C. 100. 1925. II).
[2] *Ibid.*, VI, p. 965; separately (C. 355. M. 116. 1925. II).
[3] *Ibid.*, VI, p. 1498; separately (A. 67. 1925. II).
[4] *Ibid.*, VII, p. 228; separately (C. 803. M. 279. 1925. II).
[5] *Ibid.*, VI, p. 438, 888, 1502.

The report[1] of the committee gives a brief survey of the work done by various organizations, foremost among them the International Chamber of Commerce, with which the committee maintained a close contact. The committee then goes on to analyze the report drawn up in 1923 by Professor Einaudi, Professor Bruins, Professor Seligman and Sir Josiah Stamp. The analysis is followed by examples of treaties concluded recently by various states for the purpose of obviating double taxation. With the help of this documentation — the theoretical work of economists, opinions of trade and industrial circles, existing laws and treaties — the committee drew up recommendations based on the division of taxes in impersonal and personal taxes.

Source of Income. As a general rule, the experts recognize that only the state in which the source of income was situated had the right to impose impersonal or schedular taxes. This principle was applied successively to various kinds of income, immovable property, agricultural undertakings, industrial or commercial establishments, mortgages, directors' fees, earned income, transferable securities and various credits. In the case of an industrial or commercial enterprise carried on in several countries, the committee recommended that each contracting state should tax that portion of the net income produced in its own territory. With regard to shipping companies, the committee admitted an exception to the effect that the tax should, subject to reciprocity, be imposed only by the country in which the real center of the undertaking was situated. As regards transferable securities, the committee considered that the state in which the debtor (the office paying interest) was domiciled should, as a rule, be entitled to levy the schedular tax. The committee, nevertheless, recommended the conclusion of agreements whereby, subject to certain formalities, the reimbursement of, or exemption from, this tax would be allowed in the case of securities, deposits or current accounts of persons domiciled abroad, or whereby the tax would be levied either wholly or in part by the state in which the creditor is domiciled.

The committee recognizes that, as a rule, the general income tax should be levied only by the state of domicile; it admitted,

[1] *Double Taxation and Tax Evasion. Report and Resolutions . . .* (C. 115. M. 55. 1925. II).

however, certain exceptions. They recommend the conclusion of bilateral conventions, when for special reasons a state, other than the state of domicile, finds it necessary to impose a general tax on income, in particular that arising from immovable property and agricultural, industrial and commercial undertakings (exclusive of dividends upon shares therein). The committee indicates two methods of avoiding double taxation in such cases: (*a*) the deduction by the domicile state of a certain part of the income tax; (*b*) the taxation in the state of origin of a portion only of the income accruing therefrom, the other portion to be taxed in the state of domicile of the taxpayer, but at the rate applicable to his total income from every source. The committee recommended that the rules adopted for the general income tax should be applied to permanent taxes on the taxpayers' total wealth of capital and to death duties.

The practical application of these recommendations is dependent upon a preliminary agreement as to the definition of domicile (domicile of the creditor, domicile of the debtor). The committee considers that the fiscal domicile, for purposes of the general income tax, should be the state in which the individual taxpayer normally resides, the term "residence" being understood to mean a permanent home. Special provisions applied to taxpayers residing or sojourning otherwise than occasionally in different states. With regard to death duties, the state in which the deceased, at the time of his death, had chosen to take up residence with the manifest intention of remaining there, should be considered as the state of domicile. For legal entities (companies or corporate bodies) the committee recommends that the state which has the right to levy the tax is the state in which the real center of management is situated.

Fiscal Debts. The committee of Technical Experts, after recalling that examination of the problem of tax evasion was referred to the League of Nations by the Genoa Conference, and was an entirely new departure, stated that there were very few international agreements on the subject. They dealt with two aspects of the question: evasion in the assessment of taxes and evasion in connection with the recovery.

A typical case of evasion of assessment is furnished by a taxpayer investing his money or collecting revenue abroad, leaving his

country in ignorance of his real income. The committee suggested that the effective method of avoiding tax evasion was for the revenue authorities to undertake to supply to other countries, on a basis of reciprocity, such information as might be required for tax assessment in respect of persons or companies domiciled in those countries. The experts recognize, nevertheless, that this exchange should be limited actually to information in the possession of states, or obtainable in the course of their fiscal administration.

The committee examines the principal obstacles with which measures for combating tax evasion would have to cope, one of the most important being the "inviolability of banking secrecy". It would only be possible to carry out its recommendations in any given country if public opinion were sufficiently prepared, and if the Government deemed the measures advocated compatible with public opinion and the requirements of its system of taxation. Another serious difficulty arose out of the special nature of the frauds perpetrated. It would be possible for two or more states to conclude an agreement on the subject of the exchange of information. There would be no obstacle, however, to a taxpayer's transferring his capital to a noncontracting state. The committee, therefore, was of opinion that the whole problem could only be satisfactorily solved if international agreements on the subject were adhered to by most of the states and were concluded simultaneously.

Tax evasion in connection with the recovery of taxes takes place when taxes can not be collected on account of the residence abroad of the taxpayer. The committee, basing its suggestions on treaties recently concluded by central European states, recommends that the administrative and judicial authorities of a given state might act for other states in the recovery of fiscal debts, the liability of which can be shown to be *res judicata*.

The committee drew attention to the close connection which existed between the problems of tax evasion and double taxation. Taxpayers, alarmed by proposals for fiscal control, did not understand why, before or during the framing of measures which might prove embarrassing to them, states did not come to some agreement in order suitably to define their respective jurisdictions as regards taxation and to avoid double taxation. On the other

hand, if states, in concluding agreements to avoid double taxation, were driven to make sacrifices in the matter of the revenue from taxation, owing to the granting of exemption, relief or reduction of taxes, they might properly endeavor to find compensation in measures against tax evasion. The connection between the two problems was, however, in the opinion of the committee, essentially a moral one, and the idea of justice in the distribution of taxes had been the predominating consideration in the investigations of the experts. The committee pointed out that measures against fiscal evasion were in the interest of all taxpayers, as states, by recovering the yield on concealed revenues, would be enabled to reduce tax rates or to redeem their loans.

The committee suggested that the creation of an international organism would be desirable. The duties of such a body would arise out of the procedure of conciliation or arbitration in regard to the interpretation of the conventions concluded by states with regard to double taxation and fiscal evasion.

The Sixth Assembly approved the future program outlined in the following resolution:

> The Assembly notes the conclusions which have been formulated by the representatives of the revenue departments of certain European countries on the problems of double taxation and fiscal evasion. It observes with satisfaction that agreement has been reached on certain common principles, which are expressed in these conclusions, and that a further conference of experts is to be convoked in 1926, selected on a larger basis. It hopes that this technical conference, which for the first time undertakes at the request of the Council the study of a financial problem of universal importance, may be able to submit practical proposals.

Esthonian Economic Reform. The Financial Committee of the League of Nations was requested by the Esthonian Government in September, 1924, to send two experts to Esthonia to study the situation on the spot so that the committee might be in a position to advise the Esthonian Government. The advice of the committee was asked with special reference to certain immediate problems of financial policy, and on these problems the committee concentrated its attention. A delegation visited Esthonia and reported to the committee which, in accordance with a resolution

of the Council, issued a report [1] containing advice which represents the responsible opinion of the committee.

It was only in 1920 that Esthonia was able to turn its attention to problems of internal construction. As a province of the Russian Empire, Esthonia had been a prosperous rural region and contributed a great part of the food supplies to St. Petersburg. There existed large industries dependent not simply upon the Russian market, but also upon the Russian army. It had no financial or commercial organizations of its own and most of the Esthonian banks were simply branches of Russian institutions. In 1920 the ruin in which savings banks and bank deposits were involved owing to the collapse of Russia left Esthonia entirely without working capital. Agriculture was compelled to find other outlets and the industries were in considerable difficulties because the Russian market no longer existed. The last five years have been a period of adaptation and creation. The Esthonian Government has performed the remarkable task of having organized a state which, in spite of the economic crisis through which the country passed, appears to be essentially stable and prosperous. It has maintained during three years a budget equilibrium and an exchange which, if not stable compared with the currencies of most other eastern and central European countries, fluctuated within narrow limits. It is in agriculture and in dairy farming that the future of this country of peasants will, according to the committee, find its most solid foundation.

The large estates, most of which belonged to noblemen of German race, are being divided up, and to promote the most economical exploitation of these holdings, the state has taken steps to develop various forms of agricultural cooperative societies. Since the agrarian reform, the forests have belonged wholly to the state and land denuded during the war is being replanted. It can not be expected, however, that the industries, with the exception of the paper and pulp factories, will soon achieve their prewar production, because of lack of working capital and the disappearance of the markets for which the industries were originally built.

During the first four years, 1918 to 1921, the budget deficits gradually sank from 78% to 16% and, to cover these deficits, the

[1] *Report of the Financial Committee . . . on the Economic and Financial Situation of Esthonia* (C. 240. M. 92. 1925. II).

treasury had recourse to inflation. The Government succeeded in reversing the balance by 1922, which year finished with a surplus of nearly 25% of total expenditure. There were substantial surpluses, also, in 1923 and 1924, and it is anticipated that the situation in 1925 will be the same. The 1925 budget estimates include for the first time the interest on the American debt. Although the sound financial policy which the Government has followed has enabled it to steer clear of fiduciary inflation, the committee states that in its credit policy it has not altogether escaped certain mistakes which have made the monetary situation somewhat difficult. The Esthonian Bank is practically a state department. During 1921 and 1922 and part of 1923 the Government endeavored to restore the big industries to some measure of their former strength by supplying them with working capital, but the hopes on which the credit policy was based did not materialize. A change of policy was introduced in 1924 including restriction of credit and a substantial increase in the proportion of credit granted to agriculture upon which the prosperity of the country in the near future, must, in the opinion of the Financial Committee, depend. Before the situation can be considered normal, it will be necessary to relieve the Esthonian Bank of large quantities of frozen credits with which it is burdened, to reorganize the institution on the same principles and general lines as those adopted when the banks of Austria, Hungary and Danzig were founded, to make it an independent central bank of issue and to establish the currency on a firm basis. These measures present no insuperable difficulties. The Esthonian Government might also consider the question of founding a mortgage institute to take over all long term loan operations at present affected by the Government.

The committee feels convinced that with a conservative economic policy directed in the first instance toward the development of agriculture, with an independent central bank acting as a center of economic activity and confining itself strictly to the essential duties of such an institution, and with constant determination of the Government to maintain budget equilibrium, Esthonia may look forward to steady progress.

Danzig Municipal Loan. Almost since its foundation, the League has, by reason of its responsibilities, devoted attention to

the financial problems of the Free City of Danzig. In the course of the last few years the Financial Committee helped to bring about the monetary reform in the Free City and established the new gulden currency. On March 14 the Council, on the proposal of the Financial Committee, authorized the issue by the municipality of a loan of £1,500,000 under the auspices of the League.[1] The Polish Government, the Harbor Board, the High Commissioner, and the Free City concluded agreements with regard to the issue, which bears interest at the rate of 7% and is devoted to municipal works of public utility and the development of the harbor. The Council appointed a trustee, C. E. ter Meulen, to supervise the execution of the loan contract concluded on February 9, 1925, by the Danzig Municipality, the British Overseas Bank and Messrs. Helbert, Wagg & Co. The trustee will address annually to the Council a report, which will be communicated to the High Commissioner.

[1] *Official Journal*, VI, p. 612.

3. ORGANIZATION FOR COMMUNICATIONS AND TRANSIT

[See *Yearbook*, p. 523.]

Danube and Rhine Navigation

Walker D. Hines, former director general of the United States Railroad Administration and later arbitrator for questions raised in the peace treaties concerning the tonnage distribution on European waterways, arrived at Geneva in April 1925, in order to begin the investigation of navigation problems on the Danube and the Rhine, for which purpose he had been appointed by the Committee for Communications and Transit. Mr. Hines first considered the report of his colleague, Major Brehon B. Somervell of the Corps of Engineers, U. S. A., who had already carried out on the spot a preliminary investigation of the navigation conditions on the Danube. Mr. Hines drew up detailed plans for a further inquiry to be conducted by Major Somervell and drafted the program for his own investigation which is part of the effort to restore the means of communication in Europe, as recommended by the Genoa Economic Conference.

The report on Danube navigation,[1] to which Mr. Hines devoted the greater part of his time, shows the following main features:

The investigation indicates that the Danube freight traffic in 1923 and 1924 was only about 56% of the normal prewar traffic. The first six months of 1925 increased about 50% over the corresponding six months of 1924. No complete comparison could be made of the amount of prewar and postwar passenger travel, but the accommodation for travelers is greater than before the war in Austria, Czechoslovakia and Hungary, somewhat less in the Serb-Croat-Slovene State, very much less in Rumania, and somewhat greater in Bulgaria. There has never been any regular passenger service on the Danube in Germany.

Before the war Austrian and Hungarian navigation companies carried most of the Danube traffic, except that a part of the traffic

[1] *Report on Danube Navigation* (C. 444 (*a*). M. 164 (*a*). 1925. VIII).

below the Iron Gates was carried by Rumanian and Greek interests. Now the traffic is divided among German, Austrian, Czechoslovak, Hungarian, Serb-Croat-Slovene, Rumanian, French and Dutch navigation companies, and the Rumanian companies have been operating above the Iron Gates more than formerly. This makes the river far more international in its actual utilization than ever before. The Danube fleets as a whole are about 25% bigger than before the war. The port and shop facilities are in general as great as, or greater than, before the war, while the traffic is much less. There is evidence of cooperation. The upriver companies are in a cartel to stabilize rates. The Bavarian Lloyd and Czechoslovak Company have arrangements for joint towing, joint operation of self-propelled barges and common use of some terminals.

The postwar diminution of traffic was largely due to the economic depression characteristic of Europe, but intensified in the Danube countries by the breaking up of the wide free-trade area which existed in the Austro-Hungarian Monarchy. This former free-trade area is cut across by the tariff barriers of seven different states, which have seriously diminished commerce among them and promise to do so to a still greater extent, except in so far as the situation may be ameliorated by the conclusion of commercial treaties.

A new practice since the war is that the Serb-Croat-Slovene State and Rumania now exclude all foreign navigation companies from handling any internal traffic or "cabotage" on the Danube in their respective countries, and also from handling any traffic on certain important tributaries of the Danube, such as the Save and the Bega, which are treated as territorial instead of international waters. This adds to their navigation interests large volumes of traffic handled before the war by the Austrian and Hungarian companies. The latter criticize the new practice as diminishing the total traffic through affording less satisfactory service.

The conception of a minimum depth of two meters at low water frequently fails of realization, at times for substantial proportions of the navigable season, because of obstacles which should be removed. Such removal above Vienna would be so costly that it probably could not be done except in connection with the development of hydroelectric projects.

An important stretch of the river, where it is the frontier between Czechoslovakia and Hungary, can and should be improved. It now constitutes the limiting factor in navigation between Vienna, Bratislava and Budapest. Between Budapest and Belgrade there are two points, one in Hungary and one in the Serb-Croat-Slovene State, at which correction of conditions is desirable. The most difficult stretch on the river is the Iron Gates section. The necessary depth of water is frequently not obtainable. Operation through this section is especially difficult, even with ample water, because of the current. Elimination of the difficulties calls for a comprehensive study of various alternatives, which are set forth in the report. The amounts of money involved are so large that cooperation of all riparian states would probably be necessary.

Navigation could be substantially promoted by cutting down the amount of frontier formalities and the time required for them and by providing more adequate port facilities. The frontier formalities involve a large economic waste, requiring tug boats and barges to remain idle for long periods, estimated to be about 6,000 barge days per year with corresponding loss of time for tugs. Before the war the Danube crossed no frontier between Passau and Orsova; there are now four frontiers and six frontier examinations.

It is recommended that adequate statistics of Danube traffic should be provided. These will be valuable to the states and the navigation companies, and will be almost indispensable in reaching a sound conclusion as to how much money can be justifiably spent in carrying out any comprehensive program of river improvement.

The report discusses the work of the Danube International Commission, the organ administering the Danube statute for all the river except the maritime part below Braila. Considering the great difficulties which confronted the commission's work in the early years, it has accomplished substantial results.

The European Commission, which has jurisdiction over the maritime Danube from Braila to Sulina, was established in 1856. Before the war it was slow to act to prevent the formation of shoals in the channel, and by the time it could be reorganized after the war, the shoals had seriously interfered with navigation. The commission announced that the jetties have been extended in

accordance with its plan, and the channel opened provides a depth of 22 feet.

It is highly desirable, in view of the extremely difficult situation of Danube navigation, for the navigation companies to do everything in their power to improve their own efficiency. The question is raised whether they can not secure more efficient performance of their barges and tugs than is now observable. Reference is made to the extraordinary results which have been accomplished in the United States by analogous efforts on the part of the railways. There may be room for important economies in this direction.

The Danube, like any other transportation system, needs adequate feeders. In large part these feeders should be the railways, and, therefore, there ought to be rail-and-river through rates and bills of lading. A state making through rates with foreign railways now loses all benefits from the traffic at the frontier.

The need of the riparian states for capital for public and private purposes is evident. It is extremely difficult to secure this capital at reasonable rates. An important factor in this condition is the misgiving on the part of capitalists in other countries as to whether a satisfactory state of international tranquillity exists and will continue in these Danube states. If the states succeed in removing causes of friction on the Danube, that condition will be a favorable argument to encourage foreign capital. To the extent that friction continues in Danube matters, the condition will be an indication in the wrong direction.

The Rhine. As regards the Rhine, Mr. Hines drew attention to the fact that the railway policy of certain riparian states is likely to have an unfavorable influence on the development of navigation. He also examined the effect of certain taxes and customs formalities.[1]

Danube Jurisdiction. The Advisory Committee, acting as a court of conciliation under Art. 376 of the treaty of Versailles and the Barcelona convention, at its eighth session examined the question of the jurisdiction of the European Commission of the Danube. A special committee which had met at Geneva, February 18–19 and March 30–April 2, visited the Galatz-Sulina section of the Danube and received information from officials and pilots of the

[1] *Report on Rhine Navigation* (C. 444. M. 164. 1925. VIII).

European commission of the Danube. The committee proceeded from Galatz to Braila by boat, hearing the inspector-general of the Rumanian ports, the captain of the port of Galatz and the captain of the port of Braila. At Bukharest, the committee was able to gather information on certain subjects from former captains of the port of Galatz. On the basis of this information and other material, the special committee drew up a report for the Advisory Committee. The latter heard statements by the representative of the Rumanian Government and by several of its members. The committee was of the opinion that the European Commission of the Danube exercised jurisdiction over the section Galatz-Braila in the same conditions as over the section between the sea and Galatz, and that discrimination between the competence of the commission as regards the river and that of the Rumanian authorities as regards the ports should not be based upon geographical considerations, but on a discrimination between navigation and port questions.

Tonnage Measurement in Inland Navigation

The Technical Committee on Tonnage Measurement in Inland Navigation met on February 26 at Paris. The committee, which is composed of representatives of the interested Belgian, French, German, Lithuanian, Rumanian, Soviet Russian and Serb-Croat-Slovene departments, adopted a draft convention aiming at the facilitation of international communications by inland navigation by means of the mutual recognition of tonnage certificates. The Subcommittee on Inland Navigation from May 7 to 11 in Paris examined the work of the special committee and adopted the draft convention with some changes.[1] On June 11 the Council convoked a conference, which sat in Paris at the French Foreign Ministry, from November 20 to November 27. As the conference affected European countries only and particularly continental states concerned with international communications by inland waterways, it was a regional or limited meeting. International organizations competent to deal with the matter, such as the Central Commission for Rhine Navigation, the European Commission of the Danube and the International Commissions of the Danube, Elbe and Oder sent representatives.

[1] *Official Journal*, VI, p. 990.

At the conference the majority of European states concluded a convention establishing, subject to certain provisional arrangements, a uniform system of tonnage measurement for vessels used in inland navigation in Europe, and the reciprocal recognition of tonnage certificates. This agreement provides considerable facilities for navigation, as it will be possible henceforth to dispense with remeasurement at frontiers. The convention, which is open for signature until October 1, 1926, has been signed by the plenipotentiaries of the following states:

Belgium, British Empire, Bulgaria, Czechoslovakia, Finland, France, Germany, Hungary, Italy, the Netherlands, Poland, Rumania, the Serb-Croat-Slovene State and the Union of Socialist Soviet Republics.

This meeting was the first of the more important League conferences to be attended by the Union of Socialist Soviet Republics, and the convention is the first general agreement concluded under League auspices signed by the Union.

Passport Conference

The convocation of an international conference on passports, to meet on May 12, 1926, was decided upon by the Council on December 9. This step, which was taken at the request of the chairman of the Committee for Communications and Transit, aims at the abolition to the widest extent possible of the passport system and at the mitigation of the disadvantages and expenses which that system entails for international relations and trade. Early in 1925 a questionnaire was circulated to states asking for information concerning the regulations in force. The conference itself realizes resolutions of the Assembly and aims to carry out resolutions of the Rome Emigration Conference. All Governments members or nonmembers of the League which attended the Second General Conference on Communications and Transit will be invited to send representatives. International organizations especially qualified to assist the conference will be invited to attend in an advisory capacity.

Reform of the Calendar

The Committee of Inquiry on the reform of the calendar met at Geneva on February 16 and 17, for the purpose of hearing the representatives of various religious bodies.

The committee heard Israel Levi, chief rabbi of France, Dr. J. H. Hertz, chief rabbi of the Hebraic Congregations of the British Empire and mandatory of the Jewish Communities of the United States; M. Furst, chief rabbi, delegate of the Rabbinical Council of the Agoudath Israel, Vienna; Dr. F. Löwenstein, chief rabbi, Zurich, and Lucien Wolf, secretary and delegate of the Jewish Joint Foreign Committee, London. The Jewish committees objected strongly to any reform of the calendar based on a system of blank or nonweek days, which would interrupt the regular sequence of the days of the week, transform the Sabbath into a movable feast, and render extremely difficult its observance. On the other hand, they presented no objections to any other reform schemes or to the celebration of Easter at a fixed date.

The committee also heard Dr. A. Keller, European Secretary of the "Federal Council of the Churches of Christ in America", who had been delegated by the American, Belgian, Czechoslovak, Danish, Dutch, Esthonian, German, Hungarian, Irish, Latvian, Lithuanian, Norwegian, Polish, Rumanian, Scottish, Spanish and Swiss Protestant Churches to present their views. Dr. Keller stated that the Protestant churches wished to cooperate in the work of the committee, and that in the view of these communities the question of the celebration of Easter at a fixed date would not cause any difficulty.

The committee decided to remain at the disposal of any religious bodies wishing to present their views on aspects or possible consequences of the reform of the calendar which were of special interest to them, and to pursue its general investigation.

Motor Vehicles

The Special Committee of Inquiry on Road Traffic met at Milan March 9–14 to discuss a draft convention on the international circulation of motor vehicles. The special committee met for the first time in October, 1924, when it agreed upon the text of a draft

convention amending that of 1909,[1] the first international agreement on motor traffic. This draft, amended at the Milan session, contains the following main provisions:[2]

It is proposed to introduce international road certificates valid separately for vehicle and driver, enabling the latter to change vehicles. The conditions are laid down for the issue and recognition of certificates, and the description is given of international signs already in use in most of the countries parties to the convention of 1909 to indicate sharp turns, level crossings, cross roads and uneven roads. A sign is added for unguarded level crossings, and another in the form of a red triangle to warn against any other kind of danger.

Motor cars on foreign highways must be provided with a strong steering apparatus allowing the car to be turned readily and surely, and with double brakes with independent action. If the weight of the vehicle carrying its full load exceeds 3,500 kgms. (7,700 lbs.) it must be fitted with a special mechanism capable of preventing, even on steep gradients, any backward movement. Cars must bear, in easily readable characters, particulars of the make and the manufacturer's number of the chassis, and either the manufacturer's number of the engine or its horsepower or the bore of its cylinders and length of stroke. Cars must carry two regulation lamps in front and a red light behind. They must carry, in addition to a numberplate of the state delivering the international road certificate, a distinctive plate showing the letters by which that state is to be recognized: G. B. for Great Britain, F. for France, C. H. for Switzerland, etc.

The international certificates shall be valid for one year and be issued either by the authorities of a contracting state or by an authorized association. The certificates shall confer upon holders the full right to drive a car in countries parties to the convention and shall be recognized as valid without a fresh examination of the car. Holders of certificates shall be bound to conform to the laws and regulations in force in the countries in which they may be driving.

The Council decided on June 11 to forward to the states parties to the convention on road traffic of 1909, the text of the new draft

[1] 102 *British and Foreign State Papers*, p. 64.

[2] Text in *Official Journal*, VI, p. 978.

convention which is intended to serve as a basis of discussion for an international conference convened by the French Government for April 20, 1926.

Telegraphic Questions

The Committee on Telegraphic Questions of the League Organization for Communications and Transit met at Geneva April 14–15 to examine the situation of wireless communications in the light of the convocation of an international telegraphic conference in Paris and of the approaching convocation of the Washington Conference for the revision of the convention of 1912.[1]

The question of telegraphic communications was brought before the Organization in the form of provisional instructions from the conference for the re-establishment of postal, telegraph and telephone services, which was held in Paris in July, 1920, on the initiative and with the cooperation of the communications section of the Supreme Economic Council. Subsequently, the Council of the League in April, 1923, invited the Advisory and Technical Committee to appoint a committee of experts to assist in drawing up, as soon as possible, new regulations for international wireless. This committee at sessions in July, 1923, in London and in November, 1923, at Geneva, endeavored to bring about the meeting of a general conference on electric communications on the basis of the decisions taken at Washington in 1920.

At its April, 1925, session, the committee came to the conclusion that it would be desirable to summon in 1926 a preliminary radiotelegraphic conference of all European states. The object of this preliminary conference would be to assist in preparing the work of the conference for the revision of the London convention of 1912 which the American Government proposes to summon in Washington. For this purpose, the preliminary conference would be able to utilize the work of the telegraphic conference which met in Paris, September 1, 1925. In this connection, the committee expressed the opinion that it would be desirable for the Washington conference to be convened in 1927 in order to be able to appreciate the practical bearing of the decisions of the Paris conference, in so far as they might concern wireless telegraphy between fixed stations.

[1] *Treaties, Conventions . . . between the United States and other powers*, III, p. 3048.

Buoyage and Lighting of Coasts

The Technical Committee on Buoyage and Lighting of Coasts met at Monaco November 3–7, when it considered various questions relating to lighthouse signs, buoyage regulations by day and by night, wireless or radio beacons, and coast and port signals.

The technical committee is working in close contact with the International Hydrographic Bureau of Monaco. The result of the joint studies of the two bodies will be laid before a conference to be convened by the International Hydrographic Bureau in 1926.

The British and United States Governments declined the invitation to take part in the work. The meeting was attended by the board of directors and the secretary-general of the International Hydrographic Bureau at Monaco, and by M. Chauvet, engineer of the port of Monaco. The International Association of Officers of the Mercantile Marine, the International Federation of Transport Workers, and the International Seafarer's Federation were represented, in agreement with the International Labor Office. The committee decided to meet in 1926 at Stockholm.

4. COMMITTEE ON INTELLECTUAL COOPERATION

The international committee met in its fifth session May 11–15 at Paris, in its sixth session July 27–30 at Geneva. At these sessions the plans for the Institute of Intellectual Cooperation, which is established in the Palais Royal, 2 rue de Montpensier, Paris 1e.

Owing to the resignations of Henri Bergson and F. Ruffini the Council on December 11 appointed Paul Painlevé and Alfredo Rocco as members of the Committee on Intellectual Cooperation, which was reconstituted as follows:

Prof. H. A. Lorentz, professor of theoretical physics at Leyden University, member of the Amsterdam Academy of Science, chairman;

Dr. Kristine Bonnevie, professor of zoölogy at the University of Oslo, delegate to the Assembly of the League of Nations;

Sir J. Chandra Bose, president emeritus of the Presidency College, Calcutta; founder and director of Bose Research Institute;

A. de Castro, director of the faculty of medicine at the University of Rio de Janeiro;

Mme. Curie-Sklodowska, professor of physics at the University of Paris, and honorary professor of the University of Warsaw; member of the "Académie de Médecine" at Paris, and of the Scientific Society at Warsaw;

Jules Destrée, former minister of sciences and arts; member of the "Académie belge de littérature et de langue française";

Albrecht Einstein, professor of physics, Berlin University;

L. Lugones, director of the National Library of the Professors of Buenos Aires;

Professor Robert Andrews Millikan, director of the Norman Bridge Laboratory of Physics at the Technological Institute of California, vice-chairman of the National Research Council, member of the International Research Council;

Professor Gilbert A. Murray, professor of Greek philology at Oxford University; member of the Council of the British Academy, and delegate of South Africa to the Assembly of the League of Nations;

Paul Painlevé, member of the Institut de France; member of the Académies des Sciences of Bologna, Stockholm, Upsala, Lincei of Rome; deputy of the Seine; former president of the Council; minister for war;

Gonzague de Reynold, professor of French literature at the University of Bern;

Alfredo Rocco, professor of the faculty of law at the University of Rome; professor at the University of Commerce of Milan; member of the "Istituto Veneto" of science and letters of Venice; member of the Higher Council of Public Education; lawyer of the Court of Appeal of Rome;

former under secretary of state for pensions to the treasury and former president of the Chamber of Deputies; minister of justice and religion; deputy;

L. DE TORRES QUEVEDO, director of the "Laboratorio electricmecanico" at Madrid; member of the Committee for the Extension of Scientific Studies (Junta para Ampliacion de Estudios); member of the "Académie des Sciences de Madrid."

The committee in July appointed the following corresponding members: Prof. Emile Racovitza (Rumania), Prof. Jaroslav Kallab (Czechoslovakia) and Prof. Hoot-Tsi (China).

INTERNATIONAL INSTITUTE

At the July session, the Committee on Intellectual Cooperation, sitting as the Governing Body of the International Institute, definitely adopted the statute, the staff regulations, and the financial regulations of the Institute, appointed a directorate and the principal officials, and drew up the budget for 1926.[1]

The Governing Body of the Institute is constituted by the Committee on Intellectual Cooperation, presided over by a French member of the committee. The Governing Body draws up the budget and determines the program of work; it appoints the directorate, the director and the heads of sections and branches. The directorate is composed of five members of different nationalities and of the chairman of the Governing Body. It meets once in two months and supervises the execution of the program established by the Governing Body, to whom it submits a yearly report.

At its meeting on July 27 the Governing Body appointed as members of the Directorate, Henri Bergson (chairman),[2] M. Gonzague de Reynold, Prof. H. A. Lorentz, Prof. Gilbert Murray, and Senator F. Ruffini.

The Institute has been divided into sections corresponding to the various spheres of activity of the committee. There are also sections and branches dealing with general affairs. Thus, the questions dealt with by the Subcommittee for Interuniversity Relations will be studied by the University Section, the questions which concern the Subcommittee on Bibliography by the Biblio-

[1] *Official Journal*, VI, p. 1460, where all documents referred to are printed.

[2] M. Bergson resigned as chairman on August 12, 1925, and was succeeded as chairman by Professor Lorentz.

graphic Section, and so on. The section for general questions will deal with subjects which do not come within the province of the other sections.

The Governing Body was unanimous in proposing as director of the Institute Julien Luchaire, inspector general of education in France and expert on the Committee of Intellectual Cooperation since its inception. The following chiefs of section have been appointed:

Arts Section: Richard DUPIERREUX (Belgian), professor at the Academy of Fine Arts, Antwerp.

University Questions Section: Otto de HALECKI (Polish), professor at Warsaw University.

Literary Section: Mlle. Gabrielle MISTRAL (Chilean), head mistress of Santiago Training College.

Information Section: G. PREZZOLINI (Italian), journalist.

Scientific Section: Professor SCHULZE-GÄVERNITZ (German), professor at Freiburg University.

Legal Section: M. de VILLALONGA (Spanish), formerly legal adviser to the International Labor Office.

General Questions: Prof. Alfred Eckhard ZIMMERN (British).

The Institute opened its doors January 16, 1926. The budget for 1926 amounts to 2,100,000 French francs, two million francs of which represent the grant made by the French Government and 100,000 francs that of the Polish Government.

Subcommittee on Arts and Letters. On the proposal of M. Destrée, the committee decided to set up a subcommittee to deal with international questions relating to arts and letters. This body includes four members of the committee and persons chosen in view of their special qualifications in art and literature, as follows:

Members:

Jules DESTRÉE (Belgian), former minister of science and arts;

Prof. L. LUGONES (Argentine), professor of æstheties at the University of La Plata;

Prof. Gilbert A. MURRAY (British), professor of Greek philology at Oxford University;

Prof. Gonzague DE REYNOLD (Swiss), professor of French literature at the University of Bern.

Associates:

Daniel BAUD-BOVY (Swiss), president of the Federal Commission on Fine Arts;

J. CASARÈS (Spanish), of the Royal Academy of Spain;

Prof. Henri FOCILLON (French), professor of history of art at the Sorbonne, former director of the Art Galleries of Lyons;

Hans JELINEK (Czechoslovak), journalist;

Prof. Pietro TOESCA (Italian), professor of history of art at the University of Florence;

Mlle. Hélène VACARESCO (Rumanian), writer;

Paul VALÉRY (French), writer and literary critic;

Felix WEINGARTNER (Austrian), writer on musical subjects, conductor and composer.

The subcommittee held its first meeting in Paris October 5–7, when it drew up a general program of work for the Sections for Arts and Letters of the International Institute.[1] The Arts Section will study among other questions that of a periodical publication — for example, a yearbook — dealing with the artistic movement in general and its international manifestations. The Section for Letters will consider means of promoting international literary intercourse and the knowledge of works published in the various countries. The subcommittee devoted special attention to the question of a comparative study of literature and to that of translations. These two sections will cooperate with the Legal Section of the Institute in the study of questions relating to the protection of the rights of intellectual workers and respect for works of art.

INTERNATIONAL UNIVERSITY INFORMATION OFFICE

The Governing Body of the International University Information Office met on April 6 at Geneva and approved reports on the distribution of the *Bulletin* and on the increase of the number of national University Offices with which the international office is in contact. The main purpose, however, of the meeting was to make arrangements for carrying out Dr. C. T. Hagbert Wright's plan for the establishment of the list of the best works published

[1] *International Committee on Intellectual Cooperation. Minutes of the Seventh Session*, p. 24 (C. 87. M. 43. 1926. XII).

in various countries. The yearly publication of a concise list of some 600 volumes of the best works appearing in various countries would meet the requirements of a certain number of librarians who consider such a list as the most practical method to enable the different countries to keep in touch with foreign literary and scientific production. In July, 1924, when the Committee on Intellectual Cooperation approved Dr. Wright's plan, it expressed the desire that this list should be drawn up with the assistance of the national committees in various countries and that the sole responsibility for the national lists should rest with the persons furnishing the names of the works. The Governing Body fixed for each country the maximum number of works to be placed on the list. Countries publishing yearly more than 10,000 works may select 40, those publishing from 5,000 to 10,000 works may select 20, those publishing from 2,500 to 5,000 works may select 10, and countries publishing less than 2,500 may select 5.

The works chosen may deal with the following subjects: history, law, social science, theology, philosophy, belles lettres, art, geography and travels, philology and literary history, exact, natural and applied sciences. They are chosen from among works which deal with important subjects, or which have a personal character and are accessible to the educated public.

The general list is coordinated by Dr. Wright before its publication in the *Bulletin* of the International University Information Office; the names of the persons furnishing the national lists being given.

Instruction of Youth

The Fifth Assembly decided that it was important that the youth of the entire world should be familiarized with the principles and work of the League of Nations and that the younger generation should be trained to consider international cooperation as the normal method of conducting world affairs. It instructed the Secretariat to investigate the means by which efforts to promote contact and to educate the youth of all countries in the ideals of world peace and solidarity may be further developed and coordinated and to submit a report on this subject to the Sixth Assembly. The report included: (1) a summary of the information supplied by Governments and by nonofficial organizations

as to what has been done to make known the work of the League of Nations and to disseminate the ideal of international cooperation; (2) information supplied by Governments and nonoffieial organizations regarding what is being done to promote contaet between young people of different nationalities.

One conclusion from this report is that instruetion in the aims of the Leagueof Nations and the promotion of eontaet between young people of different nationalities is an indispensable correetion to chauvinist tendeneies. In spite of the diversity of the edueational systems in different countries, definite instruction regarding the League of Nations is frequently provided for, and sometimes organized, by the eompetent authorities. Again, numerous unoffieial organizations are ready to promote wider knowledge of the prineiples on whieh the League of Nations is based by means of instruetion in this subject. There is a growing desire for the preparation of suitable textbooks whieh would be studied by the younger generation, and would acquaint them with what has been done in the sphere of international eooperation. The Sixth Assembly passed the following resolution:

The Assembly notes with satisfaetion that most of the states Members of the League have acted on the resolutions adopted by the Fifth Assembly on the subject of the instruction of youth in the ideals of the League of Nations and the encouragement of contact between young people of different nationalities. It expresses its satisfaction with the report prepared by the Secretary-General on this subject and considers that the report should be regarded as a first stage.

It therefore invites the Council:

(*a*) To consider the possibility of requesting all states Members of the League of Nations and non-Member states to keep the Secretary-General informed of the progress made in their respective countries as regards the various points mentioned in the report, and to forward to the Secretary-General all publications on this subject as soon as they appear.

(*b*) To instruct the Secretary-General to collect the information mentioned above. This information should be communicated from time to time to states Members of the League and to other states interested in the question.

(*c*) To forward the Secretary-General's report,[1] together with the proposals submitted by the Chilean, Haitian, Polish and Uruguayan

[1] The report is available in separate form as Documents A. 10 and A. 10 (a). 1925. XII.

delegations, to the Committee on Intellectual Cooperation and to request it to consider the possibility of summoning a subcommittee of experts to consider the best methods of coordinating all official and non-official efforts designed to familiarize young people throughout the world with the principles and work of the League of Nations and to train the younger generation to regard international cooperation as the normal method of conducting world affairs.

The Chilean delegation proposed study of the desirability of convening "a conference of school teachers to study the best means for creating a spirit of world fraternity in schools." The Haitian resolution read:

With a view to moral disarmament, the League of Nations invites its Members to undertake as far as possible the revision of their history manuals so as gradually to reduce the number of pages devoted to military events and especially those passages in which wars of conquest are justified and held up for admiration.

The proposal was "to consider the question of spreading universally the works of great literary and artistic value of all nations whose spirit corresponds to the principles and aims of the League of Nations."

The Uruguayan delegation proposed the appointment of "a qualified person or persons to prepare documents for use as models or examples for the guidance of members of the teaching profession in explaining the organization, the aims, and the work of the League of Nations."

All the ideas thus referred to it are being carried forward by the committee, whose subcommittee is Messrs. Murray, Destrée and Casarès.

5. ADVISORY COMMITTEE ON TRAFFIC IN WOMEN AND PROTECTION OF CHILDREN

This committee was reorganized in accordance with a resolution of the Council dated December 10, 1924.[1] It met in its reconstituted form in a fourth session May 20–27, 1925. The change was due to the fact that the Fifth Assembly decided to intrust to the League the task which had hitherto been performed by the International Association for the Promotion of Child Welfare. The Council added a group of new assessors to the committee to assist it in its new duties; it also added a representative of Belgium to the Government representatives on the committee. It is really a double committee, sitting on either subject of its jurisdiction with the appropriate assessors in attendance.

A request from five international women's organizations to be represented on the Advisory Committee when questions concerning child welfare were discussed was granted by the Council on March 13, when it decided to appoint the nominee put forward, Miss Eleanor Rathbone, J. P., as an additional assessor to serve in the group of assessors.[2] The five organizations were the International Council of Women, the International Suffrage Alliance, the International Federation of University Women, the Women's International League for Peace and Freedom and the World's Young Women's Christian Association.

As the Advisory Committee pointed out that strong interest was taken in the subject of child welfare by a large number of voluntary societies in North and South America, the Council on June 9 requested the Secretary-General to consult the United States and Uruguayan representatives with a view to bringing before the next meeting of the committee proposals for the choice of an additional assessor for the American continent. On December 14 the Council named the additional assessors. The committee is consequently constituted as follows:

[1] *Official Journal*, VI, p. 135, 221.
[2] *Ibid.*, VI, p. 463.

COMMITTEE ON TRAFFIC IN WOMEN AND PROTECTION OF CHILDREN

Members named by Governments:

Count CARTON DE WIART (Belgium);
Dr. Estrid HEIN (Denmark);
S. W. HARRIS (British Empire);
Don Pedro SANGRO y Ros de Olano (Spain);
Miss Grace ABBOTT (United States);
M. REGNAULT (France);
Marquis Paulucci DE CALBOLI (Italy);
Yotaro SUGIMURA (Japan);
Stanislas POSNER (Poland);
Nicolas Petresco COMNÈNE (Rumania);
Dr. Paulina LUISI (Uruguay).

Assessors for Traffic in Women:

Miss Josephine BAKER, International Bureau for Suppression of Traffic in Women and Children;
Mme. AVRIL de SAINTE-CROIX, Organisations internationales des femmes;
Mme. de MONTENACH, Association catholique internationale des œuvres de protection de la jeune fille;
Mme. CURCHOD-SECRETAN, Fédération des Unions nationales des amies de la jeune fille;
S. COHEN, Jewish Association for the Protection of Girls and Women;
Louis VARLEZ, liaison officer with the International Labor Office.

Assessors specially appointed for the protection of children:

Henri ROLLET, Association internationale pour la protection de l'Enfance;
Dr. HUMBERT, Ligue des Sociétés de la Croix-Rouge;
Dame Katherine FURSE, International Organization of Boy Scouts and Girl Guides;
Miss Eglantyne JEBB, Union internationale de secours aux enfants;
Miss Eleanor RATHBONE, Women's International Organizations;
M. JOHNSTON, International Labor Office;
Dr. Léon BERNARD, Health Organization of the League of Nations;
Bascom JOHNSON;
Miss Julia C. LATHROP, National Conference of Social Work;
Ismael VALDES, Pan American Union;
Miss Charlotte WHITTON, Social Service Council of Canada and Canadian Council of Child Welfare;
Mlle. BURNIAUX of Brussels, International Federation of Trade Unions.

On March 13 the Council considered a request of the Swiss Government to be represented on the committee. Austen Chamberlain, reporting on the subject, was of opinion that the Government representation on the committee was already large and that the Council would find difficulty in refusing further possible requests for representation, if it acceded to this one. The Council indorsed the opinion of its rapporteur and the Swiss Government did not press its proposal.[1]

[1] *Official Journal*, VI, p. 463.

Traffic in Women

The committee examined the reports sent in by the Governments for 1923 and 1924 on the application of measures adopted or contemplated with a view to the suppression of the traffic, together with the reports of the principal charitable associations on their activities. It heard a general review of the work of the special committee appointed to study the conditions in which the traffic is carried on and the measures taken to suppress it.

With regard to the suppression of the traffic the committee took note of fresh adhesions to, and ratifications of, the international convention of 1921 on the traffic in women. It adopted resolutions on questions concerning licensed houses, the employment of women police, emigration in its relations to the traffic, and propaganda. The committee recommended that, before proceeding to the expulsion of a foreign prostitute, the competent authorities in each country should inform charitable associations of the measures they intended to take in order that these associations, while respecting the principle of personal liberty, might be in a position to assist the expelled person, to endeavor to provide her with other means of existence and to give her every support and help. It constituted a permanent committee consisting of the Spanish, Polish and United States delegates to study questions relating to propaganda.[1]

Protection of Children

The committee determined its sphere of action and drew up the program of its future work. It decided to take the normal child as the basis of its study and to emphasize the constructive side of child welfare at least as strongly as the question of protecting the child from adverse influences or shameful exploitation.

In one of its resolutions, the Fifth Assembly expressed the opinion that the League could most usefully concern itself with the study of those problems on which the comparison of the methods and experience of different countries, consultation and exchange of views between the officials or experts of different countries, and international cooperation might be likely to assist the Governments in dealing with such problems. Accordingly,

[1] *Official Journal*, VI, p. 909–931.

the committee divided its work into three main categories: (1) documentation; (2) research; (3) discussion.

The work which the committee is undertaking bears on the following points:

1. The law relating to the protection of life and health in early infancy;
2. The compilation of the law relating to the age of consent and to the age of marriage;
3. The preparation of an international convention for the assistance or repatriation of foreign children who are abandoned, neglected or delinquent;
4. The effect of child labor on the physical and moral well-being of children, and the measures taken for the restriction and regulation of such labor;
5. The effect of family allowances on the physical and moral well-being of children and on the birth rate and infant mortality rate;
6. The effect of the cinematograph on the mental and moral well-being of children.

The committee proposes to consider the kind of mental and physical recreation best calculated to help in the formation of character in children; questions connected with their biological education; the question of the neglected and delinquent child and the effects of alcoholism in relation to the traffic in women and the protection of children.

The American Social Hygiene Association placed a sum of $5,000 at the disposal of the League for child welfare work, while the Friends of the League of Nations contributed $1,500.

The Sixth Assembly, emphasizing the importance of hygiene, passed a resolution requesting the Health Organization to investigate infant mortality from the point of view of feeding in infancy, and requesting the Council to instruct the Health Committee to undertake this investigation and to inquire into the advisability of constituting a subcommittee which would be able to call upon the cooperation of specialists in various countries in questions concerning child hygiene and which would be requested to initiate the investigation of this and of any other questions connected with child hygiene the consideration of which might be deemed expedient.

6. OPIUM

[See *Yearbook*, p. 552.]

The outstanding event in 1925 was the completion of the work of the two conferences which had convened in 1924. These are the subject of a special study in this series, *The International Opium Conferences*, Vol. VIII, Nos. 2–3.

Advisory Committee

The Fifth Assembly recommended to the Council, in the interest of the development of the work of the Advisory Committee, to take the necessary steps for the inclusion on the committee of a representative of a Latin American country. The Council in December, 1924, [1] invited Bolivia to appoint such a representative. Bolivia, which is one of the principal coca producing countries of the world, named Manuel Cuellar as its appointee to the committee.

The Council on December 8, 1924, decided that the importance of Switzerland as a manufacturing country justified its representation on the committee after it had deposited at The Hague the ratification of the 1912 convention. That was done on January 15.

The Advisory Committee on Traffic in Opium and other Dangerous Drugs held its seventh session at Geneva from August 24 to 31. The committee then consisted of the following:

Sir Malcolm Delevingne, K.C.B., chairman (Great Britain);
Dr. Anselmino, vice-chairman (Germany);
Manuel Cuellar (Bolivia);
Chao-Hsin Chu (China);
M. Bourgois (France);
Sir John Campbell, C.S.I., O.B.E. (India);
Dr. Mitsuzo Tsurumi (Japan);
W. G. van Wettum (Netherlands);
Bartolomeu Ferreira (Portugal);
Nicolas Petrovich (Serb-Croat-Slovene State);
Luang Sri Visarnvaja (Siam);
Dr. H. Carrière (Switzerland);
S. Pinkney Tuck (United States of America).

Assessors:

Henri Brenier.
Sir John Jordan, G.C.I.E., K.C.B., K.C.M.G.
Mrs. Hamilton Wright. [2]

[1] *Official Journal*, VI, p. 139.

[2] Assessor of American nationality from 1926 is Arthur Woods of New York.

Mr. Tuck, the American consul at Geneva, had been instructed to attend the meeting in an unofficial capacity. The Swiss representative took his seat on the committee for the first time. The Chinese Government had made known that its representative would not attend this meeting, and the Bolivian representative was unavoidably prevented from being present.

Illicit Traffic. The committee passed the following general resolution, which was adopted in its report by the Council on September 9, 1925:[1]

(i) The Committee desires to call the attention of the Council and the Assembly to the prevalence of the illicit traffic in the drugs at the present time, its organized character and the large financial resources behind it, as indicated by the documents laid before the Committee and appended to its report.

(ii) Its examination of these reports and of the action taken by various Governments as indicated in the reports leads the Committee to urge, in amplification of its previous recommendations on the subject.

(*a*) That in all cases in which illicit transactions are discovered or suspected the most energetic steps should be taken by the Government to follow up every clue which may lead to the discovery of the persons engaged in the traffic.

(*b*) That any information pointing to the complicity of any person or persons in another country should be *immediately* communicated to the Government of that country with a view to similar investigations being made. (The recommendations made by the Committee in 1922 and 1923 have, in many cases, not been acted upon by the Governments.) A report of the results of the investigations should be sent to the Government communicating the information (and to the Secretariat of the League in any case in which the communication is made through the Secretariat).

(*c*) That the particulars so communicated should be as full as possible and should include in particular, if known, a description of the packages and the *marks* on the packages, the names and addresses of the consigner and consignee, the names and addresses of any agents through whom the goods have passed, the place from which the goods were dispatched, the date on which they were dispatched, the name of the ship (or description of the route) by which they were dispatched, etc., etc. Specimens of the containers and labels should also be sent.

(iii) The Committee would also lay great stress on the importance of discovering the sources from which the supplies are obtained by the illicit traffickers and of dealing severely with firms of licensed manufac-

[1] *Official Journal*, VI, p. 1354, 1475, 1483.

turers and dealers who are found to be knowingly supplying drugs for the illicit traffic. In the opinion of the Committee, the most effective method of dealing with such manufacturers and dealers is to deprive them of their license or authorization to manufacture, deal in or be in possession of the drugs, and it recommends that this course should be considered by the Government in each case.

(iv) The Committee would also draw attention to the fact that, in some of the most important cases mentioned in the documents before it, it has not been possible for the Governments to take any action for the punishment of the persons engaged, for the reason that no offense against the laws of the country had been committed, and it would point out that this fact strongly emphasizes the importance of the provisions in Art. 29 of the convention adopted by the Second International Opium Conference in February, 1925.

Persian Export. The problem of illicit export from Persia was considered in detail.

Export from the Persian Gulf to the Far East is, next to the production of opium in China, the most important factor in the illicit traffic in opium which is being carried on in the Far East. The committee had before it particulars which showed that during the period from May 9, 1924, to May 25, 1925, 6,456 cases containing approximately 460 tons of opium were known to have been exported from the port of Bushire. Of this amount, 4,489 cases, or approximately 346 tons, were declared at the port of export as destined for Vladivostock; 506 cases, or approximately 36 tons, for Dairen; 371 cases, or approximately 26 tons, for Keelung; and 350 cases, or approximately 25 tons, for Macao.

Apart from the quantities required for Formosa and the leased territory of Kwantung, nearly the whole of these exports were destined for the illicit traffic. Only a very trifling amount of the huge quantity declared as destined for Vladivostock reached that port, where the Soviet authorities appear to be doing their best to prevent the illicit traffic in narcotics.

Persia has not yet ratified the 1912 convention or adopted the import certificate system recommended by the League, and exports from the Persian Gulf are not controlled by any system of export licenses or authorizations. The committee considered that measures for the effective control of this traffic are of the first importance. Complete control can only be secured by the adop-

tion and enforcement on the part of the Persian Government of the system of export licenses and import certificates, and it recommended to the Council and to the Assembly that urgent representations should be addressed to the Persian Government, requesting them to come into line in this respect. The recommendations of the committee adopted by the Council on September 9 were:[1]

(*a*) That the Persian Government should be urged to put into force *without delay* an effective system of control over exports of opium from Persian ports, more particularly by the adoption of the system of export authorizations and import certificates in respect of each consignment;

(*b*) That powers whose flag is carried by ships engaged in trade with the Persian Gulf should be recommended to adopt measures to control the conveyance of opium from the Persian Gulf on such ships and to prevent its diversion into the illicit traffic;

(*c*) That powers at whose ports vessels conveying opium from the Persian Gulf call should be recommended to put in force at once the measures contained in Chap. V of the convention concluded by the Second International Opium Conference for the control of transshipment of consignments of opium and dangerous drugs.

Annual Reports. The annual reports from states Members of the League and parties to the 1912 convention are firmly established in practice. However, the promptitude of making them left much to be desired and in too many instances the documents were not being forwarded.[2] The committee's work has been hampered by this failure and by delay in sending the reports. The Council was accordingly asked to bring to the attention of the states the importance of the reports relating to the traffic in opium and dangerous drugs being dispatched in no case later than October 1 following the year to which the reports relate in the case of the Far Eastern states, or than July 1 in the case of other states.

Certificate System. The import certificate system has been accepted by 35 states as follows:

Albania.	Brazil.	Czechoslovakia.
Australia.	Bulgaria.	Danzig.
Austria.	Canada.	Denmark.
Belgium.	Cuba.	Finland.

[1] *Official Journal*, VI, p. 1476, 1480.

[2] See table, *Official Journal*, VI, p. 1484.

Germany.
Great Britain.
Greece.
Guatemala.
Haiti.
Hungary.
India.
Irish Free State.
Japan.
Latvia.
Lithuania.
Mexico.
Netherlands.
New Zealand.
Norway.
Panama.
Poland.
Siam.
Spain.
Sweden.
Switzerland.
Union of South Africa.
United States of America.

Arts. 13 and 15 of the convention adopted by the Second International Opium Conference provide that a copy of any export authorization or diversion certificate shall be sent to the Government of the importing country. The committee recommended that the copies should be sent direct by the authority which issues the certificate to the corresponding authority in the importing country, and that, on the convention coming into operation, a list of the authorities in the different countries charged with the issue and reception of such certificates should be issued by the Council to all the signatory states. Alternatively, a copy might be sent, if preferred, through the consular or diplomatic officer in the importing country.

Narcotic Offenses Treaty. The extradition treaty recently concluded between the United States and Canada in respect of offenders against the laws relating to opium and dangerous drugs suggested to the committee that the attention of the Governments Members of the League or parties to the convention might be called to the conclusion of this treaty, and that they might be asked to examine the question, with a view to the possible conclusion of similar treaties.

Limitation of Production. The Sixth Assembly examined a resolution in the Final Act of the Second Opium Conference for the appointment of a commission to visit certain opium-producing countries, for the purpose of studying local difficulties connected with the limitation of the production of opium to quantities required for medical and scientific purposes. The Persian delegate stated that, while his country was anxious to cooperate by all means in its power in the suppression of the illicit traffic in opium, it was impossible for it to limit its production unless other crops were substituted for the opium poppy. He therefore urged, as at the Second Opium Conference, that a commission of inquiry be sent to Persia. The Assembly approved the proposal and

requested the Council to appoint a commission of three to examine the question from the point of view of replacing the poppy by another crop, of transport problems and of business conditions and markets in the East. It voted a credit of 100,000 Swiss francs for the inquiry. The American Bureau of Social Hygiene is to contribute $20,000 (100,000 francs) toward the expenses of the commission.

Inquiry Commission. On December 11 the Council constituted the commission as follows: Frederic A. Delano (American), chairman; Professor Fridriano Cavara (Italian), of Naples University, and Victor Cayla (French), agricultural engineer.

7. MITIGATION OF SUFFERING

International Relief Union

[See *Yearbook*, p. 566, for history and committee.]

During the year a scheme for an International Union for relief in disaster was drawn up by a committee of experts. As a result of a debate on this question at the Sixth Assembly, a draft amended by the committee has been communicated to Governments for their observations to be received by July 1, 1926.

The Committee of Experts appointed by the Council, in accordance with a resolution of the Fifth Assembly, to examine the possibility of carrying out Senator Ciraolo's scheme for an international federation for mutual assistance met at Geneva from May 25–28, at Paris June 27–29 and November 18–20.

The committee prepared the draft statute of an international organization which would bear the name of "International Relief Union." This organization would comprise a general council of government representatives; an advisory committee of 15 members appointed in view of their technical qualifications and their experience, account being taken of their geographical distribution; and an executive committee with limited membership which, thanks to the cooperation of the Red Cross and, if necessary, other associations with similar objects, would provide first aid in disasters falling within the scope of the union. In the draft statutes the word disaster applies to misfortunes and disturbances due to *force majeure* (act of God) when they affect entire populations, when their consequences are such as to exceed the normal provisions even of a provident Government, and when they are of an exceptional character in the stricken countries. It is proposed to invite the governments to provide £25,000 required for the inauguration of the work of the union, the scale of contribution being based to a certain extent on that of the allocation of the expenses of the League of Nations. Nevertheless, it is hoped that the main resources of the organization may be drawn from private generosity. The League of Nations would be intrusted with the financial administration of the funds, and, as usual in such cases would give wide publicity to the objects to which the

money was devoted. The International Relief Union will not be in existence until the statutes have been ratified by at least 12 states whose combined contributions amount to three-fifths of the initial fund agreed upon, or 60% of the total number of units. Two further conditions must be fulfilled: The General Council of the Union must hold its inaugural meeting and must appoint the Executive Committee of the Union.

The plan in its last revision was submitted to states for their consideration by resolution of the Council of December 14.[1]

Refugees

On the proposal of the Norwegian delegation, the question of Armenian and Russian refugees, which since the Fifth Assembly had been dealt with by the International Labor Office, was discussed by the Sixth Assembly.

According to a statement prepared by the International Labor Office, there are more than 1,000,000 Russian refugees, 200,000 of whom are unemployed or in casual employment. In addition, a considerable number of Armenians, 23,000 in Greece alone, are in a precarious condition. Unemployment, which has been rife in Europe for some years, has an undeniable bearing on refugee questions. Emigration overseas having been proposed as a solution of the question, a mission of technical experts was sent to South America to examine the possibilities of settling refugees in Latin American countries. These steps, together with various administrative measures, such as a census of refugees, the formation of advisory committees for the selection of refugees for whom employment was obtainable, etc., resulted in the definite settlement in 30 different countries of about 18,000 refugees. Recognition for the so-called Nansen passports has now been obtained from 40 Governments in the case of Russians, and from 28 in the case of Armenians.

The Assembly expressed its appreciation of the work of the Refugee Service of the International Labor Office in cooperation with the High Commissioner, Dr. Nansen. While recognizing the temporary character of the Refugee Service, it authorized the inclusion in the 1926 budget of the International Labor Office of a sum of 303,000 Swiss francs for continuation of the work.

[1] *Official Journal*, VII, p. 178; the revised text is at p. 338.

The Assembly recommended the convocation of an intergovernmental conference to examine (1) the question of passports, and (2) the possibility of creating a revolving fund of £100,000 to assist the migration of Russian and Armenian refugees. The Council on September 28[1] in a meeting attended by Dr. Nansen and the director of the International Labor Office, Albert Thomas, decided to refer to the Governing Body of the International Labor Office all the Assembly documents relating to the question of measures to help refugees. The Council authorized Dr. Nansen to take on its behalf and as soon as possible steps for the summoning of an intergovernmental conference on the question of passports and, subject to the agreement of the Governing Body of the International Labor Office, on that of the revolving fund of £100,000.

Armenian Refugee Loan. The Assembly on September 26, 1925, passed the following resolution:

The Assembly,

In view of the resolution adopted by the Fifth Assembly at its meeting on September 25, 1924, inviting "the International Labor Office, in collaboration with Dr. Nansen, to institute an inquiry with a view to studying the possibility of settling a substantial number of Armenian refugees in the Caucasus and elsewhere";

In view of the reports by Dr. Fridtjof Nansen and by the experts who were sent with him to Armenia;

In view of the fact that these reports are unanimous as to the possibility of carrying out irrigation works which would allow of the settlement in Armenia under good conditions of at least 15,000 Armenian refugees, now in Greece and Constantinople, as also of 10,000 refugees already repatriated, on condition that the sum of about 9,000,000 gold rubles (£900,000) is forthcoming for the execution of the necessary work;

Desirous of availing itself of every practical opportunity of giving effect to the resolution, so often renewed by former Assemblies, regarding the return of Armenian refugees to a national home:

Invites the Council to appoint at once not more than five commissioners whom it would empower:

(*a*) To ascertain finally the technical possibility of the proposed undertaking;

(*b*) To exchange views, as may be necessary, with the organs of the

[1] *Official Journal*, VI, p. 1401.

League of Nations, the Government of the Armenian Republic,[1] and the other Governments, the associations and private individuals whose help would appear useful for the realization of the scheme;

(c) If their findings are favorable, to propose to the Council the constitution of a body of trustees to whom its statutes would give especially the following powers:

(1) To conclude with all authorities, public and private, all necessary contracts for the execution of the plan for settling the refugees; to accept, if necessary, from the Armenian Government a concession of the areas to be irrigated.

(2) To negotiate, if necessary, the issue of a loan; and, in that case, to act as trustees of the funds, and to assure the financial service. . . .

The technical and financial prospects of the settlement of Armenian refugees in the Caucasus were discussed in Paris on October 30 and 31 by the commission, which had been appointed by the Council on September 26. The commissioners were:

Karl Bergmann, director of Lazard, Speyer and Ellisen, Frankfort; former under secretary of state in the German finance ministry;

Sir Murdoch MacDonald, former Egyptian under secretary of state for public works;

Fridtjof Nansen, High Commissioner of the League of Nations for refugee questions;

Jules Pams, senator, former French minister of home affairs;

Commendatore Poma, delegate of the Italian Treasury in Paris.

The commission decided[2] to send to Armenia Captain Quisling (Norwegian) to act as liaison officer to the Armenian Government, and an engineer, who would make an expert study of the irrigation scheme, the cost of which is estimated at one million sterling. In addition, it arranged, in accordance with the instructions of the Council, for the necessary exchanges of views with the organizations of the League, with the Government of the Armenian Republic and with associations and private individuals whose help may appear useful. The committee met a second time on December 4.

[1] The Armenian Socialist Soviet Republic is a part of the Transcaucasian Socialist Federal Soviet Republic, which was established by an agreement signed March 12, 1922. The federation is joined with other portions of the former Russian Empire in the united state known as the Union of Socialist Soviet Republics, by the latter's constitution of July 6, 1923. The Armenian republic includes portions of the former Russian provinces of Erivan, Alexandropol and Elizavetpol. The boundary to the west has not been delimited with Turkey.

[2] *Official Journal*, VII, p. 227.

PART III. DUTIES UNDER TREATIES

I. PROTECTION OF MINORITIES

[See *Yearbook*, 1925, Part III, I.]

The protection of minorities falls to the Council as a result of treaties between the states concerned, which may differ in the obligations assumed by the states and especially in the importance which various provisions of the treaties may have in different communities. The general procedure was improved in 1925.

The Council on June 10 adopted[1] a resolution confirming formally certain practices with regard to the constitution of the so-called minorities committee, which, in virtue of the Council's resolution of October 25, 1920, considers all petitions and communications relating to the protection of minorities. The committee is composed of the acting president of the Council and two colleagues appointed by him. The rapporteur noted that the minorities committee, while reserving to the other members of the Council the right of initiative conferred upon them by the treaties, had become the normal body for dealing with the League's work in connection with the protection of minorities. This made the appointment of its members a question of very considerable importance.

The resolution adopted by the Council provided that, when the acting president of the Council was the representative of the state of which the persons belonging to the minority in question were subjects, or the representative of a neighboring state of the state to which the minority in question was subject, or the representative of a state the majority of whose population belonged from the ethnical point of view to the same people as the minority in question, the duty which devolved upon him under the resolution of October 27, 1920,[2] should be performed by the most recent holder of the presidency who was not in the same position. The Council further laid down that the president, in selecting his colleagues, should not appoint the representatives of states which came within the above mentioned categories.

[1] *Official Journal*, VI, p. 878. [2] *Ibid.*, I, No. 8, p. 8.

On the basis of a proposal of the Lithuanian delegation, aiming at the preparation of a general minorities convention, various discussions took place in the Assembly and its Sixth Committee on the question of procedure. In the Sixth Committee it was pointed out that the treaties and declarations for the protection of minorities were the concern of certain states only, while others were exempt from such obligations; this, it was stated, was not in conformity with the principle of equality between states. On the other hand, several delegates urged that it was not correct to look at the matter in this light since the special position of states bound by treaties and declarations was the result of circumstances peculiar to those states. As regards the question of the procedure followed by the Council in dealing with minorities questions, various delegates paid a tribute to the work of the Council and emphasized the advantages of the procedure in force. Some suggestions were made in view of its improvement, but it was pointed out that, whatever might be done, the provisions of the minorities treaties must be respected.[1]

The Lithuanian proposal was withdrawn. The discussions were transmitted to the Council for its information.

German-Polish Convention. On June 8, the Council took note of the exchange of the ratifications of the Vienna convention of August 20, 1924, between the Polish and German Governments on the subject of the acquisition of Polish nationality.[2] It approved clauses in this convention in so far as they concerned the League of Nations in virtue of the treaty of June 28, 1919, between the Principal Allied and Associated Powers and Poland.

Bulgaro-Greek Minorities

The Greek National Assembly rejected on February 3, 1925, the protocols signed on September 29, 1924,[3] by which the two Governments in separate but identic proposals to the Council agreed that these gentlemen would act as an advisory body for Greek minority questions in Bulgaria and for Bulgarian minority questions in Greece. They were to undertake inquiries on the

[1] *Records of the Sixth Assembly. Minutes of the Sixth Committee*, p. 21, 41.

[2] Text in *Official Journal*, VI, p. 895; *Treaty Series*, XXXII, p. 331.

[3] *Treaty Series*, XXIX, p. 117, 123.

spot into the needs of persons belonging to the minorities and jointly submit to either Government reports on the measures to be taken.

The Council on March 14 examined the rejection by the Greek Assembly of this protocol. The Council, while expressing its regret at having proceeded to sign, through its president, an instrument which it felt justified in regarding as a contract between itself and the Greek Government, stated that it did not desire to impose on Greece any new obligations which were not provided for in the treaties. The Council considered it, however, advisable to draw the attention of the Greek Government to its engagements and obligations arising out of the treaty for the protection of minorities,[1] a treaty which it had signed and ratified. The Council decided to address to the Greek Government a questionnaire bearing on the three following points:

1. What has been done by the Greek Government since September 29, 1924, up to date, in order to execute in practice the stipulations of the minorities treaty?
2. What is the program for the future action of the Greek Government if it has not been possible up to now completely to execute in practice the stipulations of the treaty?
3. What, in the opinion of the Greek Government, are the needs of the Slav-speaking minority in the matter of education and public worship, and what special measures has Greece taken, or does she propose to take, in order to satisfy these needs?

The Council had before it on June 10 the reply of the Greek Government to the questions raised by the Council in March. The Greek Government explained that no new legislative or other measure had so far been taken with a view to giving effect to the stipulations of the minorities treaty, for the reason that this treaty only came into force on August 6, 1924, and the time limit for the voluntary and reciprocal emigration of Bulgarian Greeks to Greece and Greek Bulgarians to Bulgaria only expired on December 31.

The Greek Government pointed out that, long before the minorities treaty, Greece had protected the legitimate rights of minorities by legislative and other provisions, constituting, in the

[1] *Treaty Series*, XXVIII, p. 243.

opinion of the Greek Government, an almost complete system for the protection of such rights. The Greek Government added that it would always pay particular attention to the application of the minorities treaty and it intended to take all legislative or other steps which experience might show to be necessary in addition to those already in existence.

With regard to the requirements of the Slav-speaking minority in the matter of education and public worship, the Greek Government stated that it would examine in a friendly spirit any request which that minority might submit for the opening and maintenance of schools with teaching in its own language. The Government further announced that it would be prepared to consider any request from Slav-speaking members of the Orthodox Church concerning the use in a church of their own language instead of Greek.

At the Council meeting, the Greek representative, M. Caclamanos, explained the steps which the Greek Government had taken or was about to take to insure the fulfilment of its obligations from the beginning of the next school year (October, 1926). Provision will be made in the budget of 1925–1926 to assist such communities as desire to found schools for the Slav-speaking population in Greece. A special program will be drawn up in order to facilitate instruction in the language of the minorities where important settlements of these populations exist.

On the proposal of Mr. Chamberlain, the Council declared that the Greek Government's letter, supplemented by the explanation of the Greek representative, was satisfactory and showed that the Greek Government realized its obligations and was prepared to meet them.

Greek Minority in Constantinople and Turkish Minority in Western Thrace

The question of the situation of the Greek minority in Constantinople and the Turkish minority in Western Thrace was examined by the Council on March 13. This question first came before the Council at its extraordinary session in October, 1924, when the Greek and Turkish delegates agreed to an eventual investigation by the Council of the position of the minorities in question. At the December session of the Council both delegates

agreed, on behalf of their Governments and pending further action by the Council, to refrain from any measures which might be prejudicial to the personal and material well-being of the populations concerned.

At its March session the Council requested the neutral members of the Mixed Commission for the exchange of Greek and Turkish populations to undertake, on behalf of the League, an inquiry into the position of the Greek minority in Constantinople and the Turkish minority in Western Thrace, as regards their rights under Art. 16 of the convention on the Exchange of Greek and Turkish populations. The Greek and Turkish representatives on behalf of those Governments agreed to the proposal of the Council. The chairman of the Mixed Commission for the Exchange of Greek and Turkish populations, M. Widding, who attended the meeting, accepted for himself and his colleagues the mandate conferred upon them by the Council.

On December 11 the Council decided to suspend the inquiry in view of the receipt of a letter from the Greek and Turkish representatives stating that the two Governments had engaged in direct negotiations.[1]

Hungarian Farmers in Rumania

The question of the farmers of Hungarian origin in the villages of the Banat and Transylvania was brought before the Council on June 11[2] by the representatives of Brazil, the British Empire and Sweden, who had been appointed to consider a petition from this minority. The petitioners were small landholders, Rumanian subjects of Hungarian origin established in these districts, who complained that under Rumanian laws they may be deprived of part or the whole of their estates, with inadequate compensation. They further declared that the measures taken against them were more radical than those taken against other Rumanian nationals.

The Brazilian, British and Swedish representatives discussed with the Rumanian representative, M. Titulesco, the questions raised in the petition. M. Titulesco informed the Council that, since March, 1925, no measures of material confiscation had been

[1] *Official Journal*, VII, p. 160. [2] *Ibid.*, VI, p. 891, 1000.

taken against the farmers in question and that he was authorized to offer the Council his Government's assurance that it would suspend all measures which might tend to affect the *status quo* as regards the holdings of these farmers, until such time as the Council could give a final opinion upon the main question.

The question was dealt with by the Council on September 5 after being thoroughly examined by a Council committee composed of the Brazilian, British and Swedish representatives. The Rumanian representative, M. Titulesco, made statements to both bodies on his Government's point of view.

In their petition the farmers refer principally to two provisions of Rumanian law. Art. 10 of the law for agrarian reform in Transylvania, the Banat, Crisana and Maramures (July 23, 1921) reads:

> The holdings of colonist farmers who settled subsequently to January 1, 1885, shall be expropriated in so far as they exceed the maximum area of land granted in the district to beneficiaries under Art. 92.

According to Art. 97, the maximum area of these holdings is 7 jugars. The petitioners allege that the system of expropriation whereby the maximum area retained by the owner is 7 jugars constitutes an exception to the general rule applied to other farmers cultivating their own land and an exception which only affects persons belonging to the Hungarian minority. According to this general rule estates cultivated by their owners are to be expropriated in such a manner as to leave the owners considerably larger areas.

Art. 2, § 1, of the law of October 25, 1921, declares null and void acts relating to state land concluded after December 1, 1918, by the Hungarian Government or its representatives in respect of territory transferred from Hungarian to Rumanian sovereignty.

The petitioners asserted that their holdings were formed out of land belonging to the Hungarian state; that a certain number of holdings were not entered in the land register in consequence of administrative delay until the spring of 1919, and consequently that these entries can be regarded under the Rumanian Law of October 25, 1921, as null and void in law and in fact. Their right of ownership, which had been acquired years before, could in this way be annulled without any compensation.

For the Council the question was whether the application to the farmers of the provisions of Art. 10 of the agrarian law for Transylvania, and of Art. 2, § 1, of the law of October 25, 1921, was entirely in conformity with the stipulation of the Rumanian minorities treaty, whereby Rumanian nationals belonging to racial, religious or linguistic minorities enjoy the same treatment and the same guaranties *de jure* and *de facto* as other Rumanian nationals.

The Rumanian Government in its reply observed that, whereas the colonization before 1885 was intended to develop districts where there was a shortage of labor, that which took place after that date had no economic purpose and merely deprived of the possibility of acquiring land a large agricultural population which possessed no cultivable land at all. When the Rumanian agrarian reform was introduced there were on the one hand large numbers of colonist farmers with holdings of from 15 to 25 jugars, and, on the other, native peasants who were landless and living in direst poverty. The stipulation contained in Art. 10 of the agrarian law for Transylvania was necessary because, despite the expropriation of the large estates, there was still insufficient land in the colonized region to meet the claims of all those entitled to benefit by the expropriation. In the distribution of the allotments formed out of land expropriated, either from large landowners or from small farmers, no distinction was made on the ground of the nationality of the beneficiaries. As regards the law concerning the nullification of acts relating to land in the territory united to Rumania, the Government declared that it in no way affected the position of farmers who had obtained their land by regular procedure, and could prove that they had paid their annual instalments to the proper authorities. The only entries revised or canceled were those irregularly made and did not involve any dispossession between 1918 and 1925.

From a statistical table furnished by the Rumanian Government it appears that the number of farmers concerned is roughly 2,300, and the total area of the farms in question is 42,000 jugars. Of this area 24,000 jugars, about 60% of the total area, have either been or may be expropriated. According to the contracts the total purchase price of the farms (without interest) is 11,300,000 Hungarian crowns. The farmers were required to pay for 50

years. If the farmers had made their annual payments in gold up to 1918, and had paid the balance in depreciated currency, the total payments would have amounted to 1,670,000 crowns. The farmers had also remained in possession of buildings, erected for the most part by the Hungarian state, the value of which was certainly not less than 1,400,000 crowns. In addition the Rumanian Government had paid compensation equivalent to 300,000 crowns for the land expropriated (60% of the total area). The settlers, therefore, had received equal, if not greater, value for the 1,670,000 crowns assumed to have been paid.

The table further shows that the application of Art. 10 leaves the expropriated farmers with an amount of land exceeding the standard holding for the district, that is to say, the portion of land allotted by the agrarian reform authorities to authorized claimants, Rumanian or otherwise, occupying the twenty-six village settlements. The expropriated farmers are left in possession of their houses, plantations and all installations on their farms.

The Rumanian Government strongly emphasized that it had no intention whatsoever of availing itself of its right of repurchase at the expense of the farmers, provided that there is no infringement of Art. 10 of the agrarian law. The position of the farmers in question is exceptional, on account of the geographical situation of their holdings, the land shortage in the region being so great that, in order to safeguard the rights of the authorized claimants, expropriation measures had to be applied very strictly.

The Rumanian Government, therefore, proposed to the Council to offer the farmers, on humanitarian grounds and irrespective of the expropriation price fixed by the law, compensation to the amount of 700,000 francs. There could be no question of amending the provisions of Art. 10 of the law on agrarian reform which would be put into full execution. The Government merely wished to give farmers who came under this clause material proof of the interest taken in their special situation.

The Council considered that this practical solution of the question seemed better calculated to meet the interests of the farmers and to pacify the inhabitants directly concerned than a legal decision canceling Art. 10 of the agrarian law. It, therefore, accepted the proposal of the Rumanian Government.[1]

[1] *Official Journal*, VI, p. 1341–52, 1456. The report adopted is at p. 1348.

Polish Minority in Lithuania

The question of the Polish minority in Lithuania was dealt with by the Council at its March session,[1] when the Lithuanian representative, M. Sidzikauskas, furnished explanations on points raised in petitions from the minority concerning the use of the Polish language, education, and agrarian reform in Lithuania. This question had been brought before the Council by the British, Czechoslovak and Spanish representatives, who considered that an exchange of views with the Lithuanian Government might thereby be facilitated.

On June 10 the Council noted the report by M. de Mello Franco (Brazil), which contained the following:

> It is my agreeable duty to state at once that the information which the Lithuanian Government has been good enough to supply to the Council is evidence of that Government's desire to cooperate with the League of Nations in removing any doubts which might exist as to the way in which the Lithuanian people fulfil its obligations toward those of its fellow-citizens which belong to a minority. I wish also to add . . . that certain of the petitioners' complaints have been satisfactorily explained in the Lithuanian Government's observations, and that moreover certain other complaints are outside the sphere of the international obligations assumed by that Government in virtue of its declaration before the League of Nations of May 12, 1922, respecting the protection of minorities.[2]

Several questions, however, remained, on which M. Zaunius for Lithuania furnished both information and documents.

The question was again dealt with by the Council on September 5. M. de Mello Franco (Brazil), reporting on the subject, submitted to the Council fresh information and the results of his examination of documents submitted by the Lithuanian representative in June. M. de Mello Franco drew attention to the fact that the measures in connection with the participation of "minorities" in the committees of the Lithuanian Diet concerned parliamentary minorities and not linguistic, racial or religious minorities as such.

The language question in schools is decided in each case according to the wishes of the parents. The decrees concerning the

[1] *Official Journal*, VI, p. 484, 581–606. [2] *Ibid.*, VI, p. 864–76, at 865.

language to be used on signs, inscriptions, etc., were repealed July 23, 1925. The law does not, generally speaking, forbid the use of any particular language in account books. Its aims are entirely fiscal, and it is for this reason that the ledger, the day-book and the cashbook must be kept in the official language.

Expropriated forest land is not redistributed, but is administered by the Government in the public interest. The Government takes care that the forests are not encroached upon, and that their produce is kept at the disposal of the whole population, without distinction of race. The fundamental principle of the agrarian reform is that the first to benefit should be the agricultural workers living on or near the land expropriated. The minorities are also allowed to benefit by the reform. The question of mortgages and other encumbrances and liens on property taken over in virtue of the agrarian reform has not yet been settled by legislation. A bill settling the question in accordance with mortgage law applying to the repartition or seizure of estates encumbered with such debts was tabled at the beginning of the present year and had already passed the second reading.

The Council, including M. Galvanauskas (Lithuania), noted the information contained in the reports of M. de Mello Franco, as well as the detailed explanations given by the Lithuanian Government. The Council further expressed the hope that the Lithuanian Government would succeed in dispelling any apprehensions which might still exist among the minorities on its territory, and in persuading them of its fixed determination to apply the provisions of the minorities declaration of May 12, 1922.[1]

Jewish Minority in Hungary

The question of the Hungarian *Numerus Clausus* law (No. 25 of 1920) was brought before the Council in September, 1922,[2] as a result of petitions from the Joint Foreign Committee of the Jewish Board of Deputies, the Anglo-Jewish Association and the Alliance Israélite Universelle. This law lays down *inter alia* that the number of students of different races and nationalities entered on the rolls of universities and other institutions for higher education shall be in proportion to the number of inhabitants of such

[1] *Official Journal*, VI, p. 1339, 1452. [2] *Ibid.*, III, p. 1204, 1425.

races and nationalities in the country, each race or nationality represented in a proportion of at least nine-tenths of its respective proportion in the country. The Council felt that it ought primarily to obtain information as to the manner in which the law was being applied and whether in practice the legitimate rights of minorities were being disregarded. The Hungarian Government on various occasions supplied statistical information on the subject. Subsequently, the Joint Foreign Committee of the Jewish Board of Deputies, and the Anglo-Jewish Association addressed to the League a further petition on which the Hungarian Government submitted its observations.

On the proposal of the Spanish, Belgian and Japanese representatives, and in the light of this material, the Council decided to resume its examination of the matter. The question before the Council was whether the *Numerus Clausus* was eompatible with the principle of equal treatment for all Hungarian nationals, irrespective of race, language or creed, as laid down in the treaties. The Hungarian representative said that his Government considered the law as an exceptional and provisional measure, necessitated by an abnormal social situation, a measure which it was decided to amend directly the situation changed. In these circumstances the Council on December 12[1] decided not to enter into the question of law, but simply to note the statements of the Hungarian Government and to await the amendment of the law in the near future.

[1] *Official Journal*, VII, p. 148–53, 171.

II. ADMINISTRATIVE FUNCTIONS

1. TERRITORY OF THE SAAR BASIN

The term of office of the five members of the Governing Commission expiring on March 31, the Council at its thirty-third session, reappointed for one year the chairman and members of the commission: M. Rault (French), M. Lambert (Belgian), M. Kossmann (Saar), G. W. Stephens (Canadian), M. Vezensky (Czechoslovak).

The reappointments did not prejudice the Council's entire freedom of action when, in a year's time, it had to take a fresh decision with regard to the chairman and the other members of the commission. The Swedish representative, who had suggested that, in appointing the chairman, the Council should as far as possible bear in mind the advantage in having this post held by all the members in turn, said that, in view of the explanation, which in a large measure satisfied his Government, he would not insist on his proposal. [1]

With 1924 the first period of the Saar régime, as established by the treaty of Versailles, came to an end. The introduction into the Saar territory of the French customs régime, in accordance with the treaty took place on January 10, on which date the provisional régime, applied in the Saar territory since its constitution, came to an end. This régime provided for the duty-free importation into the Saar of German goods for local consumption and the duty-free importation into Germany of Saar produce. One consequence of the entry into force of the French customs régime on the frontier between the Saar and Germany was the complete removal, on October 1, 1925, of the customs barrier which had existed since 1920 between the Saar and France.

As negotiations for a Franco-German commercial treaty were not successful, the delegations agreed, before breaking off their conversations, to make an arrangement regarding the customs régime of the Saar territory. The agreement provides for the importation into the Saar territory of certain products of German

[1] *Official Journal*, VI, p. 461, 556.

origin or manufacture, either free of duty or at minimum rates, up to certain given quantities, and — as a counterpart — the importation into Germany of products of Saar origin or manufacture, duty-free and up to certain given quantities. The agreement is conditioned on an arrangement between the French and Saar metal industries.

Gendarmerie. The Italian representative, on March 13 presented to the Council a general statement on the question of the increase of the Saar gendarmerie and the presence of French troops, including the views of the German Government and the explanation of the Governing Commission on the subject.

M. Scialoja recalled the successive withdrawals of French troops, the progressive increase in the gendarmerie and the conclusion reached by the Governing Commission, that the gendarmerie could not possibly count on effective assistance from other police forces in the territory. The rapporteur further informed the Council that the commission was of opinion that the recruiting and maintenance of 500 new gendarmes would, in present circumstances, prove too heavy a burden on the budget. The commission had accordingly decided to provide for an increase of 250 men only. The gendarmerie force would, in consequence, number 1005 men on March 31, 1926. M. Scialoja recalled that the German Government on February 19 had once more urged that the question of the withdrawal of the French troops from the territory should be definitely settled. The Council approved the Governing Commission's proposal to increase the local gendarmerie by 250 men during the financial year 1925–26. At the suggestion of Sir Austen Chamberlain, it requested the Governing Commission to submit a report on the manner in which it would be possible, in the absence of troops, to carry into effect sub-par. 3 of par. 30 of the Saar Annex to the Versailles treaty which lays down that the Governing Commission shall provide in all cases for the protection of persons and property in the Saar territory. The gendarmerie on October 1 numbered 879 men.

The many intimate details of the régime are regularly covered in the periodical reports of the commission, the 21st of which dealt with the first quarter of 1925. They are regularly published in the *Official Journal.*

2. FREE CITY OF DANZIG

The Council on March 13 decided that it was essential to put an end to a state of affairs by which it was constantly obliged to deal with a number of technical details of secondary importance, embittering Polish-Danzig relations. For this purpose it requested M. Quiñones de Leon, while avoiding any infringement of the treaties, conventions and special agreements between Poland and Danzig, to propose some modification of the procedure employed for dealing with Polish-Danzig disputes, the object being to prevent such disputes from assuming a serious character, endangering public security in the Free City, or jeopardizing good relations between Poland and Danzig. The Council, moreover, stated its opinion that the Danzig and Polish Governments should never resort to direct action against one another, understood as action which might endanger or prove a serious obstacle to the maintenance of public security in Danzig or of good relations between Danzig and Poland.[1]

Settlement of Disputes. The Council on June 11 adopted a new procedure for the settlement of differences between the Free City and Poland. This system had been drawn up at the request of the Council by the Spanish representative, M. Quiñones de Leon. It maintains the system of direct negotiations between the parties. As formerly, the high commissioner can, if necessary, invite either or both of the parties to attend a meeting to discuss the question at issue. In the case of technical or legal questions, however, the high commissioner is empowered under the new regulations to consult, before giving his decision, the technical organizations of the League or experts designated by the Council rapporteur on Danzig. Formerly the reference of a question to the League technical organizations or experts took place, as a general rule, after appeal had been lodged with the Council against a decision of the high commissioner. The result of the new system will be, it is hoped, to lessen the number of appeals to the Council and thus to eliminate the political element in disputes which may arise.

[1] *Official Journal*, VI, p. 468, 562.

Should an appeal be lodged against the decision of the high commissioner after he has consulted the technical committees or experts, the high commissioner will communicate to the Secretary-General the opinion of the experts together with the other relevant documents. This material will be transmitted to the Council.[1]

The Constitution of the Free City being placed under the guaranty of the League, it would seem natural that the high commissioner, as representative of the League, in cases where he came to the conclusion through petitions or otherwise that there was a danger of infraction of the stipulations of the constitution, might at his discretion bring the matter to the notice of the Council. The Council therefore decided that the high commissioner might receive such petitions for information in case they were addressed to the League.[2]

Polish Postal Service. The Polish Government appealed to the Council against a decision of the high commissioner on the subject of a dispute between the Free City and Poland with regard to the Polish postal, telegraph and telephone service at Danzig and concerning particularly the installation of letterboxes and the employment of Polish postmen in the Free City. The Council decided on March 13[3] that both parties must receive fullest assurance that all aspects of the question would be thoroughly considered and that to this end the Permanent Court of International Justice was requested to give an advisory opinion, which was rendered on May 16 to the effect that:

There is not in force a decision of General Haking which decides in the manner stated in par. 18 of the present high commissioner's decision of February 2, 1925, or otherwise the points at issue regarding the Polish Postal Service.

The Polish Postal Service at the Port of Danzig is not restricted to operations which can be performed entirely within its premises in the Heveliusplatz, and may set up letterboxes and collect and deliver postal matter outside those premises.

The said service is not confined to Polish authorities and officials, and can be used by the public.

[1] *Official Journal*, VI, p. 880.
[2] *Ibid.*, VI, p. 950.
[3] *Ibid.*, VI, p. 471.

On June 11, the Council adopted the advisory opinion of the Permanent Court,[1] and decided to set up a commission of four experts, appointed by the chairman of the Advisory Committee on Communications and Transit in agreement with the Council's rapporteur, to present to it proposals for the delimitation of the Port of Danzig for the purposes of the Polish postal service, with due reference to the opinion of the Court.

The Commission for the Delimitation of the Port of Danzig for the purposes of the Polish Postal Service met at Geneva on July 16. It was composed of M. Hostie, secretary-general of the Central Commission for Rhine Navigation; M. Montarroyos, formerly chairman of the Navigation Subcommittee of the Advisory and Technical Committee on Communications and Transit; Colonel de Reynier, formerly chairman of the Danzig Harbor Board; and M. Schreuder, director of the Amsterdam Postal Service. After drawing up its program of work, the commission proceeded to Danzig, where it heard the interested parties and pursued its investigation. On its return to Geneva on July 30, the commission drew up its report, which was submitted to the Council by the high commissioner of the League at Danzig.

The commission was unanimously of the opinion that the port, in the postal sense, should include not merely the area occupied by its technical plant, but also the area in which its economic constituents were concentrated. It considered that, wherever documents contained reference to postal communications between Poland and the Port of Danzig, the reasonable inference was that they referred primarily to communications from and to trade and shipping firms, agencies, banks, etc., which could not, in the nature of things, set up their main establishments on the water, on the quays or in warehouses. The commission nevertheless agreed that the town area to be included in the port should not exceed such proportions as would be necessary. It considered that the Polish postal area should be restricted to those portions of the actual town where establishments whose work was connected with the port were sufficiently numerous. In the commission's opinion, the boundary should be traced with a view to the inclusion in the Polish postal area of the buildings situated on both sides of the streets of squares through which it passes.

[1] See Publications of the Permanent Court of International Justice, Series B, No. 11.

On September 19 the Council adopted the report, approving the boundaries of the port as laid down by the experts. In order to allow for any change that may occur in the economic and technical services of the port, the boundaries are subject to revision every five years, at the request of one of the parties. The Council invited the parties to enter into negotiations in order to make arrangements with regard to (1) the delivery of postal matter to Polish authorities outside the port and (2) the delivery of postal matter for addressees outside the port at addresses within the port. Pending the conclusion of agreements on the subject, the Council considered that Danzig should provisionally grant the necessary facilities to Poland. The Council also invited the parties to endeavor to reach agreement on certain subsidiary questions, such as currency, language, taxation, etc.[1]

Depot for Polish War Material. The chairman of the Harbor Board had requested, for technical reasons, that the Council's decision of March 14, 1924, should be amended. By that decision the Westerplatte peninsula was placed at the disposal of the Polish Government, solely for the purpose of the unloading, storage and dispatch to Poland of war material and explosives in transit.

On September 19 the Council was of the opinion that the Harbor Board should undertake the proposed delimitation. Owing to the risk of accidents, it was decided that the Harbor Board should seek the advice of experts. Poland was entitled to take possession of the Westerplatte as soon as possible and, at the suggestion of the high commissioner, November 1 was fixed as the date of transfer.[2]

The Council adjourned to its next session the consideration of proposals of the Polish Government regarding the establishment of a guards detachment on the Westerplatte peninsula. The question was whether the arrangement proposed by the Polish Government, which is provided for by the Danzig-Polish agreement of June 22, 1921, is objectionable on account of the stipulation in Art. 5 of the Constitution of the Free City,[3] which reads: "The Free City of Danzig can not without the previous consent of the League of Nations . . . serve as a military or

[1] *Official Journal*, VI, p. 1371.

[2] *Ibid.*, VI, p. 1367.

[3] *Official Journal, Spec. Sup.*, No. 7.

naval base." On December 9 the Council adopted a report in which it was concluded that the placement of guards did not amount to the establishment of a military base so long as they were only connected with the transit of war material and did not appear outside the reserve area in uniform.[1]

Danzig Municipal Loan. At its June meeting the Financial Committee dealt with a question raised by the banks which issued the Danzig municipal loan of April, 1925. This question concerned the acceptance by the Council of certain duties under the general bond relating to the loan. The Financial Committee considered that the Council might accept these duties, an opinion which the Council ratified on June 11. Arts. 32 and 36 of the general bond lay down that the trustee may draw the attention of the Council to any breach by the municipality of the terms of the general bond. The Council may be called upon to settle disputes between the municipality, the financial institutions in charge of the loan service and the trustee. The Free City may appeal to the Council if it considers that the trustee has abused his authority.[2]

Sundry other questions of less or more technical interest were considered by the Council during its March session.

The Council in December appointed Dr. Joost A. van Hamel (Netherlands), director of the Legal Section of the League Secretariat, to succeed Mervyn Sorley MacDonnell as High Commissioner of the League for a term of three years from February 22, 1926.

[1] *Official Journal*, VII, p. 137, 283. [2] *Ibid.*, VI, p. 887, 967.

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THE MEXICAN REVOLUTION AND THE UNITED STATES, 1910-1926

By CHARLES WILSON HACKETT

Professor of Latin American History, University of Texas, visiting Lecturer on Latin American History and Economics, Harvard University, 1925-26

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CONTENTS

PAGE

Socio-economic revolution of 1910 339
Delays in securing agrarian reforms, 1910–1915 342
The provisional agrarian law of 1915 344
Reform program in Art. 27, Constitution of 1917 346
Enforcement of agrarian provisions of Art. 27 347
Enabling decrees nationalizing subsoil deposits 349
Basis of diplomatic *impasse*, 1920–1923 351
Mexican counter-proposals 353
Tension increases 355
Mexico defends stand in controversy 357
Final diplomatic exchanges 360
Obregón's accomplishments and recognition 362
The United States-Mexican Commission of 1923 365
Agrarian discussions 366
Nationalization of subsoil deposits 371
Claims conventions 374
Cordial relations, September, 1923, to November, 1925 375
Bases for new diplomatic controversies, 1925 375
Controversy over the Alien Land Bill 377
Protest against petroleum law 382
Development of controversies over alien land and petroleum laws 383
Termination of the diplomatic controversies 390
Conclusions regarding controversies over alien land and petroleum laws . . 395
Present status (May, 1926) of alien land and petroleum laws 396
Enforcement of religious and educational provisions of Constitutional Art. 27 398
Conclusion 400

DOCUMENTS

1. Land decree issued by First Chief Carranza on January 6, 1915, at Vera Cruz 403

2. Decree requiring foreigners to renounce their national protection when acquiring rights to certain real property in the Republic of Mexico 405

3. Political Constitution of the United States of Mexico, Art. 27 407

4. Attitude of United States toward Mexican jurisdiction over American nationals 412

5. The agrarian problem:
   a. Understandings of the American and Mexican Commissioners, 1923 413
   b. Organic law of Sec. I of Art. 27 of the Constitution 414
   c. Regulations governing the organic law of Sec. I of Art. 27 417

PAGE

6. The subsoil and petroleum problem:
   a. Understandings of the American and Mexican Commissioners, 1923 422
   b. Law regulating Art. 27 of the Constitution in the matter of petroleum 425

7. General claims convention between the United States and Mexico . . . 431

8. Special claims convention between the United States and Mexico for the settlement of claims of American citizens arising from revolutionary acts in Mexico from November 20, 1910, to May 31, 1920 436

9. Development of religious policy 440

THE MEXICAN REVOLUTION AND THE UNITED STATES, 1910–1926

By

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Socio-Economic Revolution of 1910[1]

The revolution which Francisco I. Madero initiated against President Porfirio Díaz in 1910 was due in part to political and in part to social and economic unrest in Mexico. Political unrest was not general. Some Mexicans, because of their education and natural instincts, desired to participate in the administration of their Government, but were denied any such participation by Díaz and his small group of political advisers and supporters. The Mexican Government in 1910 was a closed political corporation, and was becoming more and more closed. Against this condition Francisco Madero loudly declaimed. His vigorous denunciation of presidential succession and election farces in Mexico made a particularly strong appeal to men like himself — educated, cultured and wealthy — who were anxious for an opportunity to enter politics but were not permitted to do so under the existing régime. "Effective suffrage; no reelection" became the slogan of the would-be political reformers. However, they never constituted more than a small minority of the people of

[1] For a full and excellent account of the socio-economic phases of the revolution of 1910 see Phipps, H., *Some Aspects of the Agrarian Question in Mexico* (University of Texas Bulletin, Studies in History No. 2, Austin, 1925). This study was accepted as a doctoral dissertation at Columbia University in 1925. The writer gratefully acknowledges indebtedness to this book in the preparation of the introductory part of the present study. See also McBride, G. M., *The Land Systems of Mexico* (American Geographical Society, Research Series No. 12, New York, 1923), and Hackett, C. W., "The New Regime in Mexico," in the *Southwestern Political Science Quarterly*, II, No. 1 (June, 1921), p. 51–72.

Mexico and the best element soon deserted the movement. The revolution of 1910 had failed as regards its political aims before the overthrow of Madero's short-lived administration.

Socio-economic unrest in Mexico in 1910 was a much more powerful force than political unrest. By the latter year social and economic conditions had become deplorable. At one extreme stood the large landholders, known as *hacendados*. When Díaz came into power in 1876 Mexico was already sufficiently cursed with an abundance of large estates, known as *haciendas*, the minimum size of which, as legally defined, was 21,945 acres. This unfortunate latifundian condition was greatly augmented by Díaz. Between 1876 and 1910, in various ways, some legal, many illegal, Díaz disposed of national domain totaling 134,547,885 acres, or an area more than one-fourth the total area of Mexico and more than three times the size of New England. All of this national domain went to make new *haciendas*, or large *haciendas* larger; none of it went to the masses. In many cases the Indians were even despoiled of their lands for the benefit of the large *hacendados*, for example, the Mayas of Yucatán and the Mayos and Yaquis of Sonora. One object of Díaz in thus disposing of the national domain was to buy off potential political rivals and thus be enabled to retain his power. The official census of 1910 shows that there were 834 *hacendados* in Mexico. Their *haciendas* varied in size up to 6,000,000 acres, or an area equal to about two-thirds of the state of Maine. In some states the latifundian conditions in 1910 were worse than in others. The state of Morelos, for example, with an area slightly less than that of Delaware, and with a population of 179,594 persons, was owned and controlled almost entirely by 20 *hacendados*.[1] Thus in Morelos there were approximately 9,000 landless persons to each *hacendado*.

At the opposite extreme from the *hacendado* class stood the Indian and Indian-like people, numbering in 1910 about 12,000,000. From time immemorial — prior to the coming of the Spaniards, during the entire colonial period and during the national period until 1890 — the majority of the sedentary Indians of Mexico had lived in villages which had owned and had administered in

[1] Phipps, *op. cit.*, p. 127. Statistics compiled by McBride (*op. cit.*, p. 154) show that of 2,234,472 heads of families in Mexico in 1910, only 3.1 per cent owned any individual property.

their own way, inalienable communal lands known as *ejidos*. The minimum size of an *ejido* came to be one square league, or approximately 4,390 acres. There was no fixed maximum size for an *ejido* and some villages and towns owned four square leagues of communal lands (17,560 acres), for example, Colima, with a population of approximately 25,000 persons. These Indian *ejidos*, prior to 1890, had constituted the principal means of support for the majority of the Indians in Mexico. They had not made for opulence, but with them the Indians had been content and self-supporting.

Such a situation was rudely disturbed by Porfirio Díaz. On May 12, 1890, he decreed that all village communal lands, or *ejidos*, must be expropriated and allotted in severalty. The thorough-going, and in many cases unjust and even brutal way in which this unwise decree was enforced during the next 20 years can not be detailed here. Suffice it to say that by 1910 — by one way or another — over 90 per cent of the Indian villages on the central plateau of Mexico — the most thickly populated region in the country — had been deprived of their communal lands.[1] The official census of 1910 tells a more dismal tale. According to it, not only had the Indians lost their lands, but 3,103,402 had lost their freedom and were listed as *peones de campo*, or agricultural laborers held in debt service. These with their families, conservatively estimated, numbered between 9,000,000 and 10,000,000 people, or from three-fifths to two-thirds of the total population of Mexico.[2]

As for a middle class in Mexico, it was small and relatively insignificant. What concerns us here are the groups at the two extremes of the social order: 834 powerful *hacendados* on the one hand and approximately 10,000,000 human beings in a revolting state of misery and serfdom, worse by far than any form of Southern slavery against which William Lloyd Garrison or Harriet Beecher Stowe raised their voices.

Under conditions such as above outlined a social and economic upheaval was inevitable. That it came when it did was because in his platform designed to achieve political reforms Francisco

[1] For a detailed account of how the Indian villages lost their communal lands see Phipps, *op. cit.*, p. 112–130. See also McBride, *op. cit.*, p. 129–138.

[2] Phipps, *op. cit.*, p. 127.

Madero, without any appreciation of the significance of what he was doing, included, more as "molasses to catch flies" than for any other reason, the following plank:

> In abuse of the law on public lands numerous proprietors of small holdings, in their greater part Indians, have been dispossessed of their lands by rulings of the department of public development (*fomento*) or by decisions of the tribunals of the Republic. As it is just to restore to their former owners the lands of which they were dispossessed in such an arbitrary manner, such rulings and decisions are declared subject to revision, and those who have acquired them in such an immoral manner, or their heirs, will be required to restore them to their former owners, to whom they shall also pay an indemnity for the damages suffered. [1]

In such a plank lay the hope of the downtrodden masses. Instantaneously and spontaneously they rose in rebellion all over Mexico. But behind the masses and their unnatural leader, there were different motives. The masses wanted agrarian and social reforms and cared relatively not at all for "effective suffrage" or "no reelection." On the other hand, Madero knew nothing and cared less about the agrarian plank which he had put into his platform. What he professed to want was political reform. But it seems safe to assume that if Madero had not won over the masses by his promise of agrarian reform he would have met with instant failure and doubtless would soon have been shot.

Delays in Securing Agrarian Reforms, 1910–1915

The revolution that was begun in 1910, therefore, was almost wholly a social and economic revolution, and such it has remained to this day. Despite the deplorable conditions at the outbreak of the revolution, however, agrarian reforms, which were the ones most urgently needed, were long delayed. This was in part due to the reaction that set in against Madero. Since the revolution of 1910 was almost wholly social and economic in character, it is not surprising that Madero's connection with it was short-lived. His multiple defaults, however, hastened the inevi-

[1] Excerpt from Madero's Plan de San Luis Potosí, October 5, 1910. An English translation of this revolutionary plan is in the *Investigation of Mexican Affairs*, 66th Cong., 2d Sess., Sen. Doc. No. 285, Vol. II (Washington, 1920), p. 2631.

table reaction against him. When he made concessions to the old Díaz party, he lost the support of the minority that had favored political reforms; when he did nothing to carry out his pledges for agrarian reform, he won the active antagonism of the downtrodden masses. Carranza in the north and Zapata in the state of Morelos rebelled against Madero, and Zapata issued his famous Plan de Ayala as a substitute for Madero's promises concerning agrarian reforms. In this plan Zapata called upon Madero and the whole world to know that he and his followers would never lay down arms "until the *ejidos* of our villages are restored to us, until we are given back the lands which the *hacendados* stole from us during the dictatorship of Porfirio Díaz, when justice was subjected to his caprice." [1]

Still further delay ensued in achieving agrarian reforms because of a Conservative counter revolution. Before Madero could be ousted by either Carranza or Zapata, or both of them, as probably he would have been, a counter revolution against Madero triumphed under the leadership of the Conservative, Victoriano Huerta. Coming into power by a *coup d'état* in February, 1913, just on the eve of the inauguration of President Wilson, Huerta from the outset had to face obstacles which proved to be insuperable. Because his administration had all the ear-marks of a restored Díaz régime, he was opposed from within by that turbulent, disappointed, land-hungry and bread-hungry mass of the population which had joined the Madero revolution to obtain social and agrarian reforms. From without he was opposed, on well-known grounds, by President Wilson. That Huerta held out until July, 1914, without ever having saluted the United States flag and in spite of the seizure of Vera Cruz by United States armed forces, is, after all, the most remarkable thing about him.

With the overthrow of Huerta in 1914 conditions seemed to warrant the hope that much needed and long-deferred reforms might be achieved under the leadership of Carranza, the First Chief of the revolutionists who had cooperated in overthrowing Huerta. But again the hope was a premature one. Civil war developed between the leaders when both Villa and Zapata were induced, — the former being bribed by the *hacendados*, — to turn

[1] Excerpt from Zapata's Plan de Ayala, in González-Blanco, Pedro, *De Porfirio Díaz á Carranza* (Madrid, 1916), p. 240–241.

against Carranza. The result was that Mexico entered the gloomiest and most disheartening period of the revolution and came to be dubbed "the land where peace breaks out once in a while." Between September, 1914, and February, 1915, Mexico City changed hands no fewer than six times.

The Provisional Agrarian Law of 1915

Developments just narrated explain why it was that peace and constructive revolutionary reforms had not been achieved for the masses who had gone to war for them in 1910. The defection of Villa, however, forced the hand of Carranza by obliging him to set forth the specific aims of the revolution. In other words, Carranza was forced to legislate as well as fight. Accordingly, on January 6, 1915, before the outcome of the struggle against Villa was settled, and the very month when it looked as though President Wilson was going to recognize Villa as the "strong man" of Mexico, Carranza issued his now famous provisional agrarian decree.[1] This decree has already gone down in history as the first constructive act of the revolution of 1910. It has not been the last such measure, however, for the alien land and petroleum laws that were passed in December, 1925, and the presidential decrees issued in February, 1926, for the purpose of enforcing the religious and educational provisions of the Constitution of 1917 are as much integral parts of the revolutionary reform program in Mexico, as is the provisional agrarian decree of January 6, 1915. Since the promulgation of this decree, the revolution of 1910 has been avowedly and altogether social and economic in character; in no wise has it been a revolution designed to achieve political reforms.

The very significant provisional agrarian decree of January 6, 1915, may be summarized as follows: First, it nullified past illegal governmental alienations of lands, waters and forests belonging to villages and communities, and all illegal acts of the Díaz administration under authority of which village communal lands, forests, and waters had been "illegally invaded and occupied." Such nullification automatically restored title to such

[1] For an English translation of this decree see *infra*, p. 403. An English translation, with Carranza's prefatory justification for issuing it, is in *The Mexican Year Book, 1922–24* (Los Angeles, 1924), p. 228–232.

communal lands to the villages. Second, it provided that villages which lacked *ejidos* but were in need of them and villages unable to bring about the restitution of their *ejidos* because of faulty titles, or for any other reason, might be endowed with lands for *ejidos* "in accordance with the necessities of their townships, the National Government expropriating the necessary lands to that effect from those immediately adjoining the townships in interest." Third, it provided the legal machinery for putting the decree into effect. This was to consist of a National Agrarian Commission of nine members; a Local Agrarian Commission of five members for each state or territory; and as many Special Executive Committees of three members each as might be needed in each state. Finally, it specified the procedure to be followed by villages when petitioning for restitution or dotation of *ejidos;* that to be followed by the respective agrarian committees in considering these requests; and that to be followed by "persons who may consider themselves injured" by the expropriation of their lands and who might desire to appeal to the courts.

At the time that the above-cited provisional agrarian decree was promulgated, the explanation was made that it was a measure designed to meet an emergency resulting from a "state of misery, abjection, and actual slavery in which this enormous multitude of laborers has lived and still continues to live." It was further stated that the purpose of the law was not "to revive the ancient communes nor to create others similar to them, but merely to give the land which it lacks to-day to the miserable population in order that it may fully develop its right to life and liberate itself from the economic servitude to which it is reduced." Specific attention was directed to the fact that proprietorship of the land was not to belong "to the commune of the town," but was to be parceled out "in full dominion with, however, the necessary limitations to prevent avid speculators, particularly foreigners, from monopolizing such property too easily," as had invariably occurred in the past whenever legal subdivisions of the *ejidos* had been made.

The effect of the promulgation of the provisional agrarian decree of January 6, 1915, was to crystallize revolutionary sentiment throughout Mexico in behalf of Carranza in his civil war against Villa and Zapata. Three months after the promulgation of the provisional agrarian decree, Carranza's able general, Álvaro

Obregón, paid for a victory over Villa with the loss of his right arm at Celaya. Thenceforth Villa was on the defensive — soon an outlawed rebel for whose head Carranza offered a price. This favorable trend of events in turn reacted favorably on Carranza's standing outside Mexico. Seven months after the battle of Celaya and ten months after the presidential agrarian decree of January 6, 1915, Carranza was formally recognized (October 19) as the head of the *de facto* Government of Mexico by the United States and eight associated Latin American republics. This success, however, came near having disastrous results. Piqued at the success of his rival in having secured recognition, Villa started upon a career as an audacious bandit and murderer. The Santa Ysabel massacre, the Columbus, New Mexico, raid, and the Pershing punitive expedition into Mexico were but outstanding incidents in the deliberate attempt of Villa to embarass Carranza by involving him in serious complications with the United States. That Villa did not succeed in all of his ulterior designs was due most of all to the forbearance of President Wilson.[1]

Reform Program in Art. 27, Constitution of 1917

During the course of the Pershing expedition into Mexico a Constituent Congress had met at Queretaro. This congress on February 5, 1917, promulgated the present Constitution of Mexico, which went into operation on May 1, 1917.[2] There are 136 articles in the Constitution, some of which contain quite advanced provisions with respect to the eight-hour day, child labor, the rights of women, and the minimum wage. But it is safe to say that Art. 27 has aroused more attention, both favorable and unfavorable, than all of the other articles combined. The reason is easily explained. Into Art. 27 the Mexicans have crowded to-

[1] For Congressional sentiment in favor of armed intervention in Mexico after the Santa Ysabel massacre in January, 1916, see Rippy, J. Fred, *The United States and Mexico* (New York, 1926), p. 345–351.

[2] The English translation of the Constitution of 1917 by H. N. Branch, printed in *The Mexican Review*, and reprinted in the following publications: Supplement to the *Annals* of the American Academy of Political and Social Sciences (Philadelphia, May, 1917); *Investigation of Mexican Affairs*, 66th Cong., 2d sess., Sen. Doc. No. 285, II, p. 3123–3152; *British and Foreign State Papers. 1917–1918*, CXI, (London, 1921), p. 778–833; *The Mexican Year Book, 1920–21* (Los Angeles, 1922), p. 116–153; *The Mexican Year Book, 1922–24*, p. 122–159. For the translation of Art. 27 see *infra*, p. 407.

gether in an illogical arrangement the constitutional provisions embodying their ideas as to what are the chief aims of the revolution of 1910. Since 1917 the enforcement of no fewer than four of the constitutional provisions to be found in Art. 27 has aroused the ire of at least some of the people of the United States and has constituted the basis for strained relations between the Governments of the two countries. The constitutional provisions referred to are (1) those relating to agrarian reforms; (2) those which nationalize subsoil deposits; (3) those designed to curb the acquisition of property, particularly agricultural property, by foreigners; and (4) those relating to religious and educational reforms.

Enforcement of Agrarian Provisions of Art. 27

Art. 27 of the Constitution of 1917 substantially incorporated, and, by so doing, gave constitutional status to, the provisional agrarian decree of January 6, 1915. More specifically, by asserting the right of eminent domain over both lands and waters comprised in the national territory, and by sanctioning the division of large landed estates subject, however, to indemnification, Art. 27 gives constitutional authorization for villages and other settlements to regain or to acquire communal lands, known as *ejidos*, and also to have access to necessary forests and water. Art. 27 also took over the legal machinery for effecting agrarian reforms that was provided for in the provisional agrarian decree of January 6, 1915. Thus the various agrarian commissions provided for in the former law continued their work without interruption under the Constitution of 1917. At the same time all transfers of lands to villages previously made by these commissions were given the status of constitutionality.

The provisional agrarian decree of January 6, 1915, as thus incorporated and extended by Art. 27 of the Constitution of 1917, was further modified by the laws of December 28, 1920, and December 10, 1921, and by the "Agrarian Regulation" issued by President Obregón, by authority of Congress, on April 10, 1922.[1] Since the latter date the agrarian law has undergone no material change.

[1] A convenient English translation of this law is in *The Mexican Year Book, 1922–24*, p. 234–238.

Under the authority of the foregoing laws and regulations, beginning with the Carranza provisional agrarian decree of January 6, 1915, the division of large estates progressed steadily, the owners, according to González Roa, one of the Mexican members of the United States–Mexican Commission of 1923, being paid in bonds at the rate of about $20 an acre.[1] "Most of the requests which the various agrarian commissions received were for restitution, not a grant of *ejidos*. This would indicate that the greater number of villages considered that they had been despoiled of their lands. However, the amount of land transferred to villages by way of grant was greater than by restitution."[2] Up to September 1, 1921, a total of 413,123 acres of land had been transferred to villages by restitution, and a total of 1,462,293 acres had been transferred to them by way of grants. During the first 21 months of President Obregón's administration, or from December 1, 1920, until September 1, 1922, dotations and restitutions of *ejidos* were made to 520 towns, and lands totaling 2,178,805 acres were alienated in favor of 119,649 persons. Only a small proportion of the dotations had been made from public lands, with the result that 949 subdivisions had been effected. Early in August, 1925, Secretary of Agriculture León stated that the land theretofore assigned, either as an endowment or by restitution to villages, was approximately 8,000,000 hectares (19,760,000 acres), or one-third of that to which he claimed that they are entitled.

From the outset of the revolution of 1910 the agrarian problem has been the most serious one in Mexico and the one most urgently demanding adjustment by the revolutionary leaders. As late as 1923 the Mexican commissioners, Señores Ross and González Roa, frankly told the United States commissioners, Messrs. Warren and Payne, that "the agrarian problem is so serious that the National Government has been compelled to give it an immediate solution by means of special methods."[3] Furthermore, that the methods adopted by the Mexican Government to settle the agrarian problem had had the effect of restoring peace through-

[1] González Roa, F., *El aspecto agrario de la revolución Mexicana* (Mexico, 1919), p. 241–242.

[2] Phipps, *op. cit.*, p. 141.

[3] *Proceedings of the United States-Mexican Commission Convened in Mexico City, May 14, 1923* (Washington, 1925), p. 31.

out Mexico is indicated by the following excerpt from an official communication from Mexican Foreign Minister Pani to the United States chargé d'affaires in Mexico City on March 31, 1923:

> This Administration succeeded in quelling such centers of rebellion and in reestablishing peace throughout the national territory, not so much by military force and bloodshed as by quick application of agrarian laws. Nobody doubts that, facing such a dilemma, the adopted solution was the most humanitarian and economic one — in spite of the inevitable damage to individual national and foreign agricultural interests. . . . This undoubted fact sufficiently justifies the hasty action of the Federal Executive to restitute or grant community lands (*ejidos*) to the villages, taking the necessary lands from the neighboring farms (*haciendas*), even postponing the indemnity for expropriations and encumbering, consequently a part of the national and foreign agricultural interests of the Republic. . . . [1]

At the same time Minister Pani frankly admitted that there had been many excesses and illegal acts committed under color of granting *ejidos* to villages. In the above-cited communication to the United States chargé he said:

> And in the face of the popular eagerness for lands, which was repressed, for a long time, the noble enthusiasm of some *agraristas* and the intrigues of political agitators who found a favorable field to act, it was not possible, on many occasions, for the Government to keep within the strictest legality. [2]

Enabling Decrees Nationalizing Subsoil Deposits

While the agrarian problem was receiving the urgent consideration of the revolutionary leaders of Mexico, another serious problem, that of the nationalization of subsoil deposits, including petroleum, had come to the front, and had involved Mexico in a very serious controversy with the United States. The basis for the petroleum problem may be briefly summarized. During the colonial period all subsoil deposits, whether gold, silver, or other metals had belonged to the Spanish Crown, which had issued

[1] *Proceedings of the United States-Mexican Commission Convened in Mexico City, May 14, 1923* (Washington, 1925), p. 28.

[2] *Ibid.*

the necessary permits for the exploitation of the same. After independence in 1821 the same principle was followed until 1884. By a law passed in the latter year and by other laws passed in 1892 and 1909,[1] however, owners of the surface, whether natives or foreigners, were given the right to exploit subsoil deposits without the necessity of a concession from the Mexican Government. Accordingly, when oil was discovered in Mexico it came under these provisions, along with gold, silver, coal and all other subsoil deposits. By 1917 Mexican oil wells were spouting millions of dollars worth of oil annually.

Under the laws of 1884, 1892 and 1909 owners of the surface in Mexico until 1917 had unquestioned title to whatever subsoil deposits there might be beneath the surface owned by them.

Art. 27 of the Constitution of 1917, however, nationalized all subsoil deposits. It did not, as is commonly believed, especially single out petroleum and nationalize it. Hence it is incorrect to speak of the petroleum problem; it is more correct to speak of the problem of subsoil deposits, whatever may be their character.

After the Constitution of 1917 was promulgated Carranza set about by presidential decree — a method much more general in Latin America than in Anglo-America — to put into operation the constitutional provisions, as he professed to interpret them, whereby subsoil deposits were nationalized. The details of the controversy evoked by Carranza's decrees to effect this need not be recited here; suffice it to say that very largely as the result of the protests of aggrieved American owners of surface rights in Mexico, including a number of American petroleum companies, there was considerable agitation in the United States in favor of armed intervention in Mexico.[2] Danger of such intervention was increased prior to November, 1918, by Carranza's well-known anti-American and pro-German attitude. Finally, however, Carranza modified somewhat his objectionable petroleum decrees.

[1] English translations of significant articles of the mining laws of November 22, 1884; June 4, 1892; and November 25, 1909 are in *Proceedings of the United States-Mexican Commission . . . 1923*, p. 13.

[2] Rippy (*op. cit.*, p. 351–357) states that as the result of the enmity of American vested interests in Mexico to Carranza an influential section of the American press "gave expression to a demand for a radical change in the administration's Mexican policy", and that a number of leading Senators and Representatives were "exponents of drastic action" in Mexico subsequent to the promulgation of the Constitution of 1917 and prior to the overthrow of Carranza in May, 1920.

His overthrow and later assassination in May, 1920, followed by the establishment of the provisional presidency of De la Huerta, relieved considerably the tension between the two Governments.

Basis of Diplomatic Impasse, 1920–1923

During the administration of De la Huerta, who was in power from May until December, 1920, the Wilson Administration gave no serious consideration to the recognition of his provisional government. After December 1, 1920, when the constitutional order was reestablished in Mexico, the outgoing Wilson Administration left the question of the recognition of the new Obregón Government to the incoming Harding Administration. President Harding was inaugurated on March 4, 1921, and promptly thereafter his administration gave consideration to the Mexican situation.[1]

On May 27, United States Chargé d'Affaires George T. Summerlin in Mexico City presented to the Mexican Government a proposed treaty of amity and commerce, comprising 18 articles, the expressed purpose of which was "to regulate and promote commercial intercourse between the two countries and to remove all causes of difference between them."[2] Art. 1 and 2 of the proposed treaty, around which the subsequent diplomatic controversy was in large measure centered, provided, in part, for (1) the reciprocal respect of the right of the nationals of either country living in the other country to enjoy the full privileges accorded to

[1] The Department of State on May 10, 1926, made public the diplomatic notes exchanged between the Governments of the United States and Mexico during the period from May 27, 1921, to March 31, 1923. These notes were published in *The United States Daily*, in the issues of May 15, 17, 18, 19, and 20, 1926. This official correspondence consists of the following documents:

a. Announcement by the Department of State on June 7, 1921;

1. Proposed treaty of amity and commerce with Mexico presented by Mr. Summerlin on May 27, 1921;

2. Undated memorandum received by Mr. Summerlin from Señor Pani, November 19, 1921, with drafts of two claims conventions attached;

3. Note from Mr. Summerlin to Señor Pani, dated February 6, 1922;

4. Note from Señor Pani to Mr. Summerlin, dated February 9, 1922;

5. Note from Mr. Summerlin to Señor Pani, dated April 20, 1922;

6. Note from Señor Pani to Mr. Summerlin, dated May 4, 1922;

7. Note from Señor Pani to Mr. Summerlin, dated May 24, 1922;

8. Note from Mr. Summerlin to Señor Pani, dated August 3, 1922;

9. Note from Señor Pani dated March 31, 1923, addressed to Mr. Summerlin.

[2] "Proposed treaty of amity and commerce with Mexico presented by Mr. Summerlin on May 27, 1921," in *United States Daily*, May 15, 1926, p. 4.

its native citizens; (2) reciprocal assurances against confiscation and expropriation, except "on proper grounds of public purpose," after the "prompt payment of just compensation" therefor; (3) assurances on the part of the Mexican Government that neither the Constitution of 1917 nor the Carranza agrarian decree of January 6, 1915, would be applied retroactively, and that neither of those documents, nor any other decree or order, should "have any effect to cancel, destroy or impair" any American right legally acquired prior to the promulgation of either; (4) restitution to American citizens of rights of which they may have been deprived since 1910, compensation to American citizens for damages done to their "property, rights or interests . . . as a result of such deprivation," and adequate compensation for any property, rights or interests of which American citizens may have been deprived, "and which it is not possible to restore;" and (5) reciprocal guaranties of the freedom of worship and the right to own church property by the nationals of either country living in the other country.

Formal announcement of the Mexican policy of the Harding Administration was made by Secretary Hughes on June 7, 1921. The most significant statements in that published announcement follow:[1]

> The fundamental question which confronts the Government of the United States in considering its relations with Mexico is the safeguarding of property rights against confiscation. . . . Whenever Mexico is ready to give assurance that she will perform her fundamental obligation in the protection both of persons and of rights of property validly acquired, there will be no obstacles to the most advantageous relations between the two peoples. . . . Accordingly this Government has proposed a treaty of amity and commerce with Mexico, in which Mexico will agree to safeguard the rights of property which attached before the Constitution of 1917 was promulgated. . . . The question of recognition is a subordinate one, but there will be no difficulty as to this, for if General Obregón is ready to negotiate a proper treaty it is drawn so as to be negotiated with him and the making of the treaty in proper form will accomplish the recognition of the Government that makes it.

[1] Announcement of Department of State in the *New York Times*, June 8, 1921; also in *Current History*, vol. XIV (July, 1921) p. 710; also in *The United States Daily*, May 15, 1926, p. 4.

In short, the United States Government refused to recognize the Government of President Obregón unless the latter should first sign a treaty which would guarantee American property rights in Mexico acquired before May 1, 1917.

President Obregón had already declined to obtain recognition of the United States Government on such conditions. On May 20, 1921, he had stated that "the acceptance and signing of a convention to obtain recognition would be equal to placing in doubt the rights that Mexico has to all the privileges international law establishes."[1] Later, in his annual message to Congress in September, 1921, he stated that the Government of Mexico was "concerned as much as that of the United States with the protection of American interests in Mexico." He added, however, that the Mexican Government "preferred to eliminate by the natural development of its political and administrative policy the necessity for promises which might humiliate it and proposes to follow this line until the field appears sufficiently free of obstacles to permit its being recognized without prejudice to its national dignity and sovereignty and to be able, later, in equality of conditions, to formulate and sign such treaties as it may deem necessary for the utmost harmony in the restored diplomatic relations between the two countries."[2]

In view of this policy of the Obregón Government, the result of the announcement of the Department of State of June 7, 1921, was to make more serious the diplomatic *impasse* between the United States and Mexico which had developed after the overthrow of Carranza in the closing months of the Wilson Administration — an *impasse* which was not to be broken until August, 1923.

Mexican Counter-Proposals

The Mexican Government made no formal reply concerning the proposed treaty of amity and commerce with the United States until November 19, 1921. In a note delivered to Mr. Summerlin on the latter date, Foreign Minister Pani reiterated the previously

[1] Statement of President Obregón, *New York Times*, May 21, 1921; *Current History*, vol. XIV (July, 1921), p. 711–712.

[2] Excerpt from the message of President Obregón to the Mexican Congress in September, 1921, in "Undated memorandum received by Mr. Summerlin from Señor Pani on November 19, 1921," in *The United States Daily*, May 15, 1926, p. 4.

announced policy of President Obregón concerning recognition of his Government by that of the United States. At the same time, but without referring to any of the provisions of the proposed treaty, he made certain counter-proposals. These were that "a mixed commission should be created which should examine and decide the claims which the United States may have to make against the Mexican Republic by reason of the damages wrought to North American citizens during the Revolution. . . . Upon making this convention, which is embraced in the salutary political program of the Government of Mexico, since it has invited all countries whose nationals have suffered injuries since 1910 to make similar conventions . . . the Government of Mexico would desire to be implicitly recognized by the Government of the United States." Once relations between the two Governments were "thus reestablished without depreciation of the dignity or sovereignty of Mexico," Minister Pani stated that the Mexican Government "would find itself enabled to develop the policy" enunciated by President Obregón, "to wit: to adopt such measures as shall inure to the greatest cordiality in those relations." Minister Pani then proposed, as "the first step embraced in this policy," the making of "another convention . . . which should establish the mixed commission authorized to examine and decide pending claims of either country with regard to the other in accordance with acts which have taken place since the signing of the convention made on July 4, 1868, to date, such subjects being excluded from the jurisdiction of the special convention first nominated." [1]

In short, the three steps by which the Mexican Government proposed to adjust differences and restore formal diplomatic relations with the United States were (1) the signing of a special claims convention for the purpose of adjudicating claims of citizens of the United States against Mexico that had arisen during the revolution; (2) the implicit recognition of the Obregón Government by that of the United States, and (3) the signing of a general claims convention for the purpose of adjudicating the claims of either country with regard to the other that were not covered by the special claims convention.

[1] "Undated memorandum received by Mr. Summerlin from Señor Pani on November 19, 1921," in *United States Daily*, May 15, 1926, p. 4.

Tension Increases

From their respective stands as made clear in the project of treaty proposed by the Department of State and the counter-proposals of the Mexican foreign minister, the United States and Mexican Governments refused to recede, with the inevitable result that the subsequent correspondence entered the controversial stage. The Department of State on February 6, 1922, through Chargé Summerlin, declined to entertain Minister Pani's proposals "unless the rights of American citizens acquired prior to the adoption of the 1917 Constitution are adequately safeguarded," and frankly stated that unless General Obregón was "willing to put the draft of the treaty of amity and commerce into a form acceptable to both parties beforehand, it would be futile to engage in any discussion of the claims conventions." At the same time the Mexican Government was invited to indicate specific objections to the provisions of the proposed treaty.[1]

Thus the United States Government, while interposing no objection to the provisions of the conventions suggested by the Mexican foreign minister, apparently considered that guaranties for the future were of more importance than the adjudication of old claims, and insisted upon the acceptance by Mexico of the proposed treaty of amity and commerce as an indispensable prerequisite either to the consideration of claims conventions between the two Governments or to the recognition of the Obregón Government by that of the United States. In this connection it is noteworthy that the special and general claims conventions as finally agreed upon between the two Governments in 1923 differ only in minor details from the special and general claims conventions that were proposed by Minister Pani in his note of November 19, 1921.[2]

By way of reply to the above-cited note presented by Chargé Summerlin, Minister Pani on February 9 reiterated his earlier counter-proposals to the United States project of a treaty of amity and commerce, namely, the signing of a special and a general

[1] "Note from Mr. Summerlin to Señor Pani, dated February 6, 1922," in *United States Daily*, May 17, 1926, p. 4.

[2] For the texts of the special and general claims conventions of 1923, see *infra*, p. 431, 436.

claims convention — the first to be followed by the "implicit recognition" of the Obregón Government by that of the United States. He also argued at length that the "quite explicable" desire of the United States Government to obtain assurances that would safeguard "the rights acquired by American citizens prior to the governance of the Constitution of 1917" was "altogether satisfied in a practical and concrete manner — despite the absence of agreements or treaties — by the mere effects of the policy adopted" by President Obregón.

Minister Pani also itemized, as he had been requested to do, "the principal objections that exist to the Government of Mexico's accepting some of the stipulations contained in the projected treaty of friendship and commerce." The substance of these objections was that certain provisions of the proposed treaty were contrary to the provisions of the Mexican Constitution or were of such a character that it did not lie within the jurisdiction of the Executive to include them in a treaty. Accordingly, Minister Pani argued that the Constitution "would have to be respected above treaties." In this connection he cited quotations from Professor Moore's treatise on international law[1] to show that "the treaty-making power is limited by all the provisions of the Constitution," and that "a treaty can not invade the constitutional prerogatives of the legislature."[2]

By way of answer to the note of Minister Pani, Chargé Summerlin, under instructions from the Department of State, expressed gratification on April 20, 1922, "that the Mexican authorities are disposed to sign immediately the two conventions on claims which they have proposed." It was further observed with satisfaction that "all objection to recognition through the signing of a treaty apparently having disappeared, the only remaining question is: What shall the treaty be? You suggest that it should be simply the proposed convention No. 1 as to claims. The Department of State has suggested that it should be the proposed treaty of amity and commerce which contains provisions as to the adjustment of claims."

Having pointed out what were understood to be the funda-

[1] Moore, J. B., *A Digest of International Law* (Washington, 1906), vol. 5, p. 166.

[2] "Note from Señor Pani to Mr. Summerlin, dated February 9, 1922," in *United States Daily*, May 17, 1926, p. 4.

mental differences between the United States and Mexican Governments concerning the recognition of the latter by the former, Chargé Summerlin made the following significant concession:

> My Government is indifferent to a mere matter of procedure. . . .
> It will be quite satisfactory to my Government to have the claims convention, or conventions, signed first, provided it is clearly understood that the signing of a treaty of amity and commerce, with provisions previously agreed upon, and put in draft form (as in the case of the claims conventions) shall follow without delay.

On the assumption therefore, that the question was merely "as to the appropriate terms of such a treaty," Chargé Summerlin cited the alleged failures of Carranza to comply with his "explicit personal promises, on the basis of which his Government was recognized," as justification for the insistence by the Department of State of "appropriate governmental action binding Mexico to afford that protection of valid titles which it seems to be admitted that the Government of the United States is entitled to ask." In conclusion, Chargé Summerlin offered a lengthy rejoinder to the objections to the proposed treaty of amity and commerce which had been cited by Minister Pani.[1]

Mexico Defends Stand in Controversy

However, the settlement of the differences between the United States and Mexican Governments was not to consist of relatively so simple a matter as an agreement concerning "the appropriate terms" of a treaty. Whatever may have been the basis for Chargé Summerlin's expressed belief that such was the case, that basis was soon completely shattered by Minister Pani in behalf of the Mexican Government; the diplomatic *impasse* soon came to offer slight prospect of being broken and the subsequent correspondence between the two Governments became more controversial in character than formerly.

In reply to Chargé Summerlin's note of April 20, Minister Pani on May 4, 1922, expressed the fear that the Government of the United States had "not given full consideration to what is

[1] "Note from Mr. Summerlin to Señor Pani dated April 20, 1922," in *United States Daily*, May 17, 1926, p. 4.

essential in the attitude of the Government of Mexico as to the problem in question." Otherwise, he stated that he was unable to explain how his note had been so interpreted as to constitute the basis for the statement in Chargé Summerlin's note that "apparently all objections to recognition by means of the signing of a treaty have disappeared."

In order, therefore, that there might not be "a scintilla of doubt" concerning the "main motive" of his note of February 9, Minister Pani quoted two paragraphs of the note which concretely indicate what the Mexican Government believed were the three above-mentioned necessary steps by which differences might be adjusted and formal diplomatic relations restored between Mexico and the United States. He again referred to the paragraph of President Obregón's message of September, 1921, "which synthesizes the part relating to the Mexican-American international situation," and argued at length with reference to the following points:

(1) "The imposition of given obligations as a *sine qua non* to granting recognition of a legal government that has the support of all the governed . . . is an affront to the dignity of such people."

(2) "The substantial part of the proposed treaty of amity and commerce . . . contains flagrant violations of some of the precepts [of the Constitution] not regulated yet" by the Mexican Congress "which is the sole authority to which the Mexican people has delegated powers so to do."

(3) There already was "substantial agreement" between the American demands and the political and administrative program of President Obregón, the good results of which would be jeopardized in case it were given the color of a "forced obedience to the imposition of a foreign power."

(4) One object of the Mexican Government in having proposed a special claims convention was "to make the protection required for said American interests more effective" and also to make the convention "an augury for closer diplomatic relations."

(5) In proposing the project of the general claims convention, the Mexican Government had "gone farther still" in its efforts to realize the above-cited purposes of the special claims convention.

In conclusion Minister Pani asserted that "the road followed

by the Government of Mexico, in a thorn-filled field," had not "been blindly marked out by any preconceived arbitrary idea," but rather was "the result inherent in the constant efforts made by one Government to reconcile its moral obligations and the conditions and political necessities of the country with the demands — without doubt well-intentioned — of the American Chancellery."[1]

Chargé Summerlin's answer, dated May 16, 1922, has not been made public. In answering it on May 24, however, Minister Pani cited alleged errors in the English translation of a paragraph taken from his preceding note which "completely changes the sense of the original Spanish." This was made the basis for the reassertion by Minister Pani that the general claims convention proposed by the Mexican Government "might advantageously substitute, with the object of resuming diplomatic relations between the two countries, any treaty of amity and commerce, thought out and written in the tenor proposed by the Department of State of Washington, not only from the Mexican viewpoint, but also — and chiefly — from the American." Minister Pani then directed attention to questions which Chargé Summerlin had asked concerning "the political and administrative program" of the Obregón Government in its relation to foreign interests in Mexico, "the part of that program which may now be considered as carried out," and the "probable duration of its complete realization."

In answering these questions Minister Pani cited various public declarations of President Obregón which contained "unequivocal concepts of the intentions of the Government in this respect." Citation was also made to recent decisions of the Mexican Supreme Court which had guaranteed the nonretroactivity of Art. 27 of the Constitution in respect to subsoil deposits. Minister Pani declared, therefore, in order that the status of foreign rights in Mexico might be resolved, that it was only necessary for the Mexican Congress to "enact the organic law which regulates the application of Art. 27 . . . in accordance with the principle established of irretroactivity." Minister Pani confessed his inability to fix the period within which reparation would be made for all the damages done to foreign persons or interests, but directed

[1] "Note from Señor Pani to Mr. Summerlin, dated May 4, 1922," in *United States Daily*, May 18, 1926, p. 4.

attention to the "firmness of purpose which animates this Government in such respect."

Minister Pani also sketched the "origin of the Mexican agrarian question, the long drawn out and laborious evolution of the popular aspiration for its solution and the pressing political circumstances which have concurred in this solution." He declared that the intention of the Mexican Government was to redeem the outstanding agrarian bonds with which owners had been indemnified for lands expropriated for *ejidos*, or village communal lands. He stated that the reason why the railroads of Mexico, which had been "seized" by a preceding administration, had not been returned to private control, was because their "deterioration . . . would have made quite difficult the return of those enterprises and their subsequent management by the respective companies." He charged that responsibility for the nonresumption of suspended interest payments on the foreign debt rested with the interested banking houses because they had "delayed more than six months in deciding to accept the invitation" of the Mexican Government to enter into discussions concerning "the best form of resuming the service of said debt." He directed attention to the previously expressed willingness of the Mexican Government to sign claims conventions with all foreign nations. These "concrete cases" Minister Pani deemed sufficient to illustrate the policy of the Mexican Government "in respect of present and future inversions of foreign capital in Mexico."[1]

Final Diplomatic Exchanges

After the dispatch of Minister Pani's note almost a full year elapsed before the diplomatic *impasse* between the two Governments gave promise of being broken. The exchange of notes was resumed on August 3, 1922, when Chargé Summerlin informally sent to Minister Pani a copy of an instruction from Secretary of State Hughes, dated July 28, 1922. This document, together with Minister Pani's reply to it, dated March 31, 1923, constitute the final exchanges of notes between the two Governments concerning the questions at issue before the creation of the United States-Mexican Commission which finally reached understandings that

[1] "Note from Señor Pani to Mr. Summerlin, dated May 24, 1922," in *United States Daily*, May 18, 1926, p. 4, and *ibid.*, May 19, p. 6.

resulted in the establishment of diplomatic relations between the two Governments in 1923.

In the instruction to Chargé Summerlin Secretary Hughes made assertions which might have been calculated to make the *impasse* even more serious than it already was. He frankly reasserted that the question at issue was "not as to the practicability of proceeding to effect recognition through the signing of a treaty or convention, but . . . simply what the treaty or convention should be." He questioned the good faith of Minister Pani's criticisms of the proposed treaty of amity and commerce by expressing the conviction that the Mexican objection to it was "not to be found in its terms," but was due to the fact that "the signing of such a treaty would not be in harmony with the public sentiment in Mexico and that it would not be ratified by the Mexican Senate." With reference to the repeated declarations of President Obregón concerning the protection of foreign rights in Mexico, Secretary Hughes, although disclaiming any intention "to question the sincerity of General Obregón's purpose" in having made the declarations, insisted that "no adequate governmental action" had been taken "to secure the valid titles acquired prior to May 1, 1917;" that "Art. 27 . . . is being applied retroactively;" and "that except possibly in rare instances no relief has been extended . . . to the American interests concerned." With reference to the agrarian problem Secretary Hughes stated that he was "deeply sensible of the important public policy that is sought to be prosecuted in securing equitable distribution of lands." He declared, however, that he knew "of no reason, or right, for the prosecution of this policy in a manner which deprives American citizens of valid titles without the payment of just compensation." Finally, Secretary Hughes, after summing up the entire "situation as to property rights" in Mexico, drew the conclusion that General Obregón's "administrative and political program" had not progressed "to such effective action as could be regarded as a satisfactory substitute for the binding engagements" which he had desired "in order to assure proper protection to the rights of American citizens in Mexico." [1]

Notwithstanding that the above statements indicated an appar-

[1] "Note from Mr. Summerlin to Señor Pani, dated August 3, 1922," in *United States Daily*, May 19, p. 6.

ently uncompromising attitude on the part of Secretary Hughes with respect to the questions at issue with Mexico, his note of instruction of July 28, 1922, contained one statement which was subsequently embraced by the Mexican Government as offering possibilities for relieving the diplomatic tension. The statement in question is as follows:

> But if the Mexican authorities will not enter into an appropriate treaty binding Mexico to respect the valid titles which had been acquired under Mexican laws prior to the Constitution of 1917, the question remains in what manner shall such assurances be given.

The above quotation was the inspiration for Minister Pani, in his reply of March 31, 1923, to make the following observation:

> This Government is pleased to note that the letter of instructions above referred to has suggested the possibility for a desirable change of procedure — an abandonment of the harsh and narrow proposal based upon the signature of a treaty of amity and commerce which, as an inevitable condition precedent to the extension of recognition to the present Government of Mexico would be prejudicial to the national sovereignty and dignity — with a view to proceeding upon the broad and even basis of Mexico's development of an adequate political (governmental) policy such as has included, and still involves, the intention of respect for rights legally acquired prior to the date when the Constitution of 1917 became effective.

Obregón's Accomplishments and Recognition

In his note of March 31, 1923, Minister Pani took occasion to remark that at the time that Secretary Hughes's note of instruction of July 28, 1922, was drafted, the policy of the Obregón Government with respect to property rights in Mexico that had been legally acquired before May 1, 1917, had not been "considered satisfactory" by Secretary Hughes. In the interim, however, it was Minister Pani's assertion that the Obregón Government had "accomplished acts of such importance in the realization of its program as must affect advantageously . . . the solution of the problem of the diplomatic relations of the two Governments." Accordingly Minister Pani proceeded to survey the "state of the Mexican-American international situation."

In the first place Minister Pani referred to the fact that the Mexican Congress and President had ratified an agreement reached by the Secretary of the Treasury and the International Committee of Bankers on Mexico — commonly known as the Lamont-De la Huerta agreement which was signed on June 16, 1922 — for the adjustment of the Mexican foreign debt. This agreement fixed the total foreign debt, including defaulted interest payments since 1914, at 1,400,000,000 pesos and provided for the resumption of interest payments thereon and for the return of the National Railways of Mexico to private ownership.

In the second place Minister Pani directed attention to the fact that negotiations had been begun between the Secretary of the Treasury and the representatives of the principal petroleum companies operating in Mexico. These negotiations had not been concluded, but the assertion was made that they "tended toward a special form of financial reorganization of those companies which might guarantee . . . their rights and which might facilitate the ultimate development of their interests."

Thirdly, Minister Pani referred to the question of the protection of titles legally acquired before 1917. This question, he stated, was still indefinite in that it awaited solution by a "future Organic Law of the Constitutional Art. 27." The so-called alien land law which was passed in December 1925, and which is discussed hereinafter,[1] is the "organic law" designed to solve this question.

With reference to the petroleum question Minister Pani, in the fourth place, cited the fact that the Mexican Supreme Court, in five cases of injunction, had, since Secretary Hughes's note of instruction of July 28, 1922, "defined in an unmistakable manner . . . the nonretroactive character of Art. 27 . . . in that part relative to petroleum." In elaborating upon the situation with respect to petroleum rights in Mexico Minister Pani cited official statistics which showed that the total petroleum production in 1922 was 182,278,457 barrels and that the entire petroleum industry in Mexico was capitalized at $1,050,532,434. Of the latter sum 91.5 per cent, or a total of $960,819,438 was held by American and British interests while only 1.1 per cent was held by Mexican interests.

[1] See p. 377.

These figures were cited as proof "that to the foreign companies . . . corresponds the greater industrial and financial prosperity realized under the protection of the régime of the nationalization of the subsoil." Minister Pani drew the conclusion, therefore, that there was "absolute want of justification for the fears felt by the oil men."

Fifthly, and finally, Minister Pani discussed the status of the agrarian program of the Obregón Government. He reviewed the sufferings of the Mexican people from earliest times until the development "by the Díaz oligarchy" of the "immoral policy of favoritism of those few above at the expense of the many below;" he justified the solution that had been adopted by Obregón as the "most humane and economic" since his administration had "succeeded in extinguishing said fires and reestablishing peace in all the national territory, more through the effect of the prompt application of the agrarian laws than by military force and shedding of blood." With reference to the claims of Americans resulting from the agrarian program Minister Pani characterized them as relatively insignificant in comparison with the property rights involved in such problems as the return of the railways to private ownership and the nationalization of the subsoil deposits, and in view of the further fact that "the number of (American) claims presented reach 26, while the Spanish claims exceed 100 and the Mexican claims are still many more." Minister Pani concluded his statements on the agrarian situation as follows:

> Considering all this . . . it may be affirmed that the damages to the American agricultural properties, as much for their extreme smallness as for their having been of inevitable and undelayable Mexican needs, and judging those damages . . . by a standard rather human than legal, they will never justify the systematic resistance, worthy of a better cause, which the Government of the United States has been opposing to the currents of sympathy . . . created and developed under the protection of the good will of the Government of Mexico. . . .[1]

Minister Pani's exposition of the improving situation in Mexico with respect to the protection of foreign property rights must have been somewhat convincing to Secretary Hughes. At any

[1] "Note from Señor Pani, dated March 31, 1923, addressed to Mr. Summerlin," in *United States Daily*, May 19, 1926, p. 6, and *ibid.*, May 20, p. 7.

rate, instead of prolonging the diplomatic exchanges which had yielded no returns comparable to the original demands of the United States Government, the Department of State very shortly decided upon another plan of action for the purpose of breaking the diplomatic *impasse* with Mexico.

The United States-Mexican Commission of 1923

On May 2, 1923, President Harding, "in an effort to reach an understanding with Mexico respecting the questions at issue between the United States and Mexico . . . appointed the Hon. Charles Beecher Warren and the Hon. John Barton Payne as American commissioners to meet two Mexican commissioners for the purpose of exchanging impressions."[1] The two Mexican commissioners appointed by President Obregón were Señor Ramón Ross and Señor Fernando González Roa. According to Secretary of State Hughes, in the instructions given to the United States commissioners when they proceeded to Mexico

> it was pointed out that the fundamental issue between the United States and Mexico was the safeguarding of American property rights in Mexico, especially as against a confiscatory application of the provisions of the Mexican Constitution of 1917, and that the principal questions arising from this issue related to:
>
> First. To the restoration or proper reparation for the taking of lands owned by the American citizens prior to May 1, 1917.
>
> Second. To the obtaining of satisfactory assurances against confiscation of the subsoil interests in lands owned by American citizens prior to May 1, 1917.
>
> Third. To the making of appropriate claims conventions.[2]

The first conference of the United States-Mexican Commission was held in Mexico City on May 14, 1923, and the final conference on August 15 of the same year.[3] From May 15 through May 31 the problems arising from the nationalization of the subsoil deposits were discussed but no satisfactory understanding

[1] *Proceedings of the United States-Mexican Commission . . . 1923*, "Preface", p. iii.

[2] Secretary Hughes to Senator Lodge, Washington, January 15, 1924, in the *Congressional Record*, LXV, P. II, January 16 to February 7, 1924 (Washington, 1924), p. 1325.

[3] *Proceedings of the United States-Mexican Commission . . . 1923*, contains minutes of the conferences.

was reached with respect to them. On June 1 the commissioners took up the agrarian problem and exchanged views in regard to its various aspects in sessions held until June 29. From July 2 to July 18 inclusive the commissioners met from time to time in informal sessions while the general and special claims conventions were being drafted. On July 19 and 20 mutually satisfactory understandings were reached with respect to the agrarian problem. On August 2 the petroleum problem was again discussed and that day a mutually satisfactory agreement was reached with respect to it. The difference in the length of time required for reaching mutually satisfactory understandings with reference to the agrarian and petroleum problems is indicative of their relative importance and the relative seriousness of the difficulties involved in each. In the agrarian problem, which is as old as history itself, are involved the inherent rights of human beings to live and to be free. The petroleum problem, on the other hand, is one that has arisen in Mexico only since the beginning of the Díaz régime and the promulgation of the Constitution of 1917 and has to do with material property rights rather than with inherent personal rights of human beings.

Agrarian Discussions

At the first conference upon the agrarian problem the American commissioners disclaimed any intention on the part of the United States Government to enter into a discussion with respect to the policy of the Mexican Government to provide *ejidos* for villages. In this connection, however, it is of interest to note that in a letter to Senator Lodge on January 15, 1924,[1] Secretary of State Hughes asserted that the Government of the United States was in "full sympathy with the efforts of the Mexican authorities to readjust large holdings so as to meet the natural demands of the people of Mexico." The American commissioners did register, however, vigorous protests against the methods employed to carry out the policy of providing villages with *ejidos*. In the first place, Mr. Warren asserted that the legal provisions for the expropriation of lands as set forth in the "Agrarian Regulation" of April 10, 1922, and other laws, were being violated. Such action, he argued, was

[1] *Proceedings of the United States-Mexican Commission . . . 1923*, "Preface," p. iii.

not only illegal but unwise, since it behooved the Mexican Government to dispossess those who were thus in illegal possession of lands. In addition to lands being illegally expropriated by governmental agencies Mr. Warren asserted that "manifest excesses" were being committed under the color of providing *ejidos* for villages. He cited "some specific cases of excesses in respect of American property," and stated that in the possession of the Department of State and of the United States commissioners there "was ample evidence of the taking of property, both buildings and land, contrary even to the provisions of the laws and decrees of Mexico without any reference to the acquired rights of American citizens under international law." [1]

The above case having been made against Mexico and proof having been offered in support of it, Mr. Warren next stated the position of the United States Government with respect to the agrarian problem as it then stood. This position as recorded in the official minutes of the conference is, in part, as follows:

> . . . The United States maintains that under the rules of international law there can be no taking of lands, water rights or other property of American citizens, in whatever form their interest may be held, legally acquired prior to May 1, 1917, under the laws of Mexico and the Constitution of 1857, without indemnification in cash at the time of the taking for the just value thereof.
>
> . . . The United States can not recognize any right of Mexico under the terms of any law, as a legal right, to pay in bonds or compel American citizens to accept bonds as compensation for land, in whatever form their interest may be held, which has been or may be expropriated for *ejidos* for towns and villages. . . . The indemnity which the Government of the United States believes Mexico should pay for these lands is their just value in cash at the time of the taking; and that bonds, not immediately convertible into paper money on the basis of their par value and acceptable to the owner of the land, can in no way be considered as indemnification under the Constitution of 1857 or under the rules of international law. By paying in bonds . . . not only is Art. 27 of the Constitution of 1857 violated, but the principles established by international law are also violated. [2]

In short, as far as the agrarian problem was concerned, it was not the taking of lands for *ejidos* by the Mexican Government

[1] *Proceedings of the United States-Mexican Commission . . . 1923*, p. 25–29.

[2] *Ibid.*, p. 29.

under the right of eminent domain, but it was against the indemnification by the Mexican Government of owners with bonds and at prices not regarded as a "just value thereof," that the American Government protested in behalf of its nationals.

The Mexican commissioners made an able rejoinder to the point of view of the United States Government as presented by Mr. Warren. They upheld the constitutional right of the Mexican Government to treat foreign residents in Mexico in the same way that Mexican citizens were treated; they defended the policy of their Government in granting *ejidos* to villages on the ground that it was designed to meet an emergency; and they defended the actual methods being employed to put this policy into operation by stating that the Mexican Government "had always endeavored by all means within its power to comply with the law," and that the desire to guard against excesses, some of which Mr. Warren had mentioned, had given rise to "a very extensive legislation."

With reference to the question of payment for the expropriation of lands for *ejidos* the Mexican commissioners asserted that in ordinary cases of expropriation the Mexican Constitution provides for expropriation on the basis of immediate compensation in cash. Under the pressure of a national emergency, however, legal provision had been made for the payment of lands expropriated for *ejidos* in 20 year bonds bearing 5% interest. Payment of interest on the bonds and a sinking fund were to be provided in part by the Government exclusively reserving for such purposes "all the revenue coming into the Treasury from the sale of lands expropriated for *ejidos* by the Government to the residents of the respective localities." The commissioners also claimed that provision was made in the law for a just appraisement of the value of the land and the improvements thereon. As evidence of the good intention of the Mexican Government the Mexican commissioners stated that, in order to make cash payments for all land expropriated for *ejidos* and in order to be able to redeem all outstanding bonds for lands, the Mexican Government was at that time negotiating a special loan. With reference to the probable value of Federal bonds issued in payment for lands expropriated for *ejidos*, the Mexican commissioners stated that they would be accepted by the Mexican Government at par value in cases such as the payment for public and national lands and the payment "for interests

or for the purchase price of lands granted to villages and sold to the residents." For these reasons and because of the efforts of the Government to negotiate a loan to redeem the bonds, the Mexican commissioners stated that they felt that they should have a cash value and should yield an income greater than rent on the expropriated lands.

Finally, the Mexican commissioners indicated the basis for establishing the value of expropriated lands. They stated that the value of such lands was arrived at from the declarations made by the property owners themselves. Hence the commissioners stated that they did not consider it unjust to take the declarations of owners as a basis, especially in view of the fact that since 1914 owners had repeatedly been given the opportunity to rectify the fiscal value of their properties. In most cases it was stated that this had not been done; in fact, the assertion was made that "the owners continued to resist complying with the legislation in that regard." Hence the commissioners asserted that "the Mexican Government believes that the owners have had the opportunity of placing themselves in a position not to suffer damages, and if any of them have not wished to take advantage of this opportunity granted them by the law, it is their own fault."[1]

The above were the points of view of the United States and Mexican commissioners with reference to the agrarian problem. The mutually satisfactory understandings with respect to this problem that were reached by the two groups of commissioners may be summarized as follows: On July 19 the United States commissioners, in view of Mexico's abnormal condition as the result of "revolutions and consequent disturbances" agreed that, if the Mexican Government would make "a statement that its claim to expropriate lands of American citizens . . . for *ejidos* . . . for towns and villages now existing . . . does not constitute a precedent for Mexico entitling her to expropriate any other kind of property . . . for any purpose except upon indemnification for the just value thereof at the time of taking having been made in cash," the United States Government would take under consideration "the question whether under the circumstances it will be willing to accept for its citizens who are owners of lands and claimants

[1] *Proceedings of the United States-Mexican Commission . . . 1923*, p. 31–34.

. . . federal bonds of Mexico . . . in payment for land at the just value thereof at the time of taking, granted for *ejidos*," provided that the *ejidos* did not exceed a specified area of 1,755 hectares (4,335 acres). Such action however, was conditioned in part "upon the conclusion of a general claims convention between the two Governments . . . under the terms of which any citizen of the United States whose lands . . . have been taken or are taken before the termination of the commission created by such a convention, will have the right to present to such commission his claim for loss or damage for any injustice arising from acts of officials or others acting for the Mexican Government."

While agreeing to take under consideration the question of payment in Federal bonds for lands expropriated for *ejidos* that did not exceed 1,755 hectares, the United States commissioners added that it was understood that from no property of a citizen of the United States, or property in which a citizen of the United States had an interest, could an area greater than approximately 1,755 hectares be expropriated for an *ejido* unless all such land in excess of 1,755 hectares were paid for in cash for the just value thereof at the time of the expropriation.

With respect to the method of arriving at the true value of the land that might be expropriated the United States commissioners stated that the United States Government did not "consider it fair, just or legal," for lands expropriated for *ejidos* to be paid for on the basis of the assessed valuation, "either as fixed after a declaration by the owner or without a declaration by the owner," and that the United States Government "would have to maintain the position that the owner was entitled to compensation, no matter how paid, for the just value of the land at the time of the taking." Such compensation should be made, not only for lands expropriated, but for "improvements, constructions, factories, aqueducts and other works wrongfully taken and for any loss or damage arising from any injustice committed."

Finally, the United States commissioners stated that the Government of the United States reserved "its rights . . . to make claims for any losses or damages to its citizens by reason of any injustice by the Mexican Government or by any state government; and in general reserves under the same conditions all the rights of whatever nature of its citizens under international law, equity

and justice, except as limited by any arrangements that may be hereafter concluded between the two Governments in respect of accepting bonds for *ejidos* of the area specified and under the conditions specified." [1]

The following day, July 20, the Mexican commissioners agreed that the Mexican Government would not maintain that the acceptance of federal bonds in payment for lands expropriated for *ejidos* of the specified area should "be regarded as an acceptance on the part of the Government of the United States of the principle that payment in bonds can be made for the expropriation of lands or other property for any other purpose." Other satisfactory assurances of the Mexican commissioners were to the effect that the Mexican Government was endeavoring to negotiate a loan so as to be able to pay for the expropriation of lands for *ejidos* in cash and that "the Mexican Government has ordered the restitution of all property and rights confiscated or wrongfully taken from their owners during the revolution." At the same meeting the Mexican commissioners in behalf of their Government, "stated that they recognize the right of the American Government to reserve the full rights of its citizens, in whatever form their interest may be held, to present claims brought about by expropriation to the commission to be hereafter constituted under a general claims convention and under the terms provided by such convention, if this exchange of views and statement results in the resumption of diplomatic relations." [2]

Thus, on the basis of the above statements, the United States and Mexican commissioners, without receding from their original positions with respect to the agrarian problem, recognized the right of the Governments of both the United States and Mexico to make any representation in behalf of their nationals as they might see fit before a regularly constituted claims commission, which was to be provided for.

Nationalization of Subsoil Deposits

In the discussion of the problem of the nationalization of the subsoil deposits the United States commissioners took the stand that no one who had acquired rights to the surface under the

[1] *Proceedings of the United States-Mexican Commission . . . 1923*, p. 37–40.

[2] *Ibid.*, p. 41–44.

laws of 1884, 1892 and 1909, and prior to May 1, 1917, could be deprived of their "ownership or their interests in such lands and subsoil by the Government of Mexico for any public purpose or utility without indemnification in cash having been made . . . for the just value thereof at the time of taking." To support their contentions the United States commissioners cited the decisions of the Mexican Supreme Court in the Texas Oil Company and four other similar cases, in all of which it had declared, under certain conditions, that Sec. IV of Art. 27, which nationalizes subsoil deposits, was not retroactive "either in letter or spirit." They also quoted President Obregón as having stated that "all private property acquired prior to May 1, 1917, would be respected and protected," and that Art. 27 would "not have any retroactive effect." The American commissioners stated, therefore, that "there was only lacking in order to solve definitely the question that Congress should issue the organic law regulating the application of Art. 27 of the Mexican Constitution in accordance with the accepted principle of non-retroactivity in order that the three branches of the Government might be in entire accord." [1]

In answer to the position taken by the United States commissioners with reference to the right of surface owners to deposits under the surface, the Mexican commissioners, citing the historic principle which had been followed in Mexico with respect to subsoil deposits prior to 1884, stated that the mining laws of 1884, 1892 and 1909, had, in reality, made a donation of the subsoil deposits to owners of the surface. They argued, however, that under the Civil Code of Mexico, which is based upon the Napoleonic Code, the transaction of a gift passing from a donor to a donee was not complete until the donee had performed some positive act indicative of his willingness to accept the donation, thereby giving it "irrevocable character." Furthermore they argued that pending the completion of such a transaction legislation with respect to it "can be changed without causing injury to anyone." [2]

On the basis of this legal reasoning, the Mexican commissioners admitted that all persons who had acquired ownership of the surface prior to May 1, 1917, and had, prior to the latter date, performed "some positive act" indicating their intention to

[1] *Proceedings of the United States-Mexican Commission . . . 1923*, p. 9–14.
[2] *Ibid.*, p. 16–19.

exploit the subsoil deposits beneath the surface, had been, and were, in conformity with the decisions of the Supreme Court, protected against the application of Sec. IV of Art. 27 which nationalizes subsoil deposits. With respect to the owners of the surface who had not performed some such "positive act" prior to May 1, the Mexican commissioners argued that they had forfeited their rights to the deposits under the surface of their land, since under the civil code of Mexico "there could be no possession except through some act indicating that there is a desire to possess."[1]

In the final conference on the petroleum problem on August 2 the mutually satisfactory understanding that was arrived at may be summarized as follows: The Mexican commissioners agreed that their Government would recognize the right to the subsoil of all owners of the surface, who, prior to May 1, 1917, had performed a "positive act," and would grant them drilling permits on such lands "subject only to police regulations, sanitary regulations and measures for public order and the right of the Mexican Government to levy general taxes."

To owners of the surface who had not performed a "positive act" the Mexican Executive would give preferential rights to the subsoil "to the exclusion of any third party who has no title to the land or subsoil."

In view of the fact that the United States refused to recognize a distinction between those owners of the surface who had and those who had not performed a "positive act" the Mexican commissioners, without repudiating the principles which they had held with respect to the matter, recognized the right of the United States to make "any reservations of or in behalf of the rights of its citizens."[2] In other words, the Mexican commissioners agreed to leave the alleged rights of individual owners involved in the controversy to the decision of an arbitral claims commission. It is on this basis that the claims arising from the nationalization of the subsoil by the Mexican Constitution of 1917 are being adjudicated by either the General or the Special Claims Commission as at present constituted.

[1] *Proceedings of the United States-Mexican Commission . . 1923*, p. 20–23.

[2] *Ibid.*, p. 47–49.

Claims Conventions

The understanding with respect to the petroleum question was reached on August 2. Meantime, on July 27, the texts of both a general and a special claims convention were formally approved by the joint commissioners. Subsequently the statements and recommendations of the United States commissioners and those of the Mexican commissioners were approved by Presidents Coolidge and Obregón, respectively. On the basis of the understanding thus reached by the executives of the two countries the United States Government formally accorded recognition to that of President Obregón[1] on August 31, 1923. This was followed, in turn, by the formal signing of the general and special conventions on September 8 and September 10 respectively.[2] The special claims convention provides for the adjudication of all claims against Mexico of citizens of the United States for losses or damages suffered "through revolutionary acts" during the war period of the revolution, namely, from November 20, 1910, to May 31, 1920. The General Claims Commission is to adjudicate all other claims of the citizens of either country that originated between July 4, 1868 — the date of the last claims convention between Mexico and the United States[3] — and the date of the termination of the said commission.

The significance of the two above-mentioned claims conventions signed in September, 1923, can hardly be overestimated. As a result of them every misunderstanding between the Governments of the United States and Mexico and every claim which any citizen of either country had against the other, was placed in the process of being adjudicated. In short, the diplomatic slate was wiped entirely clean of all questions at issue between the Governments or citizens of the two countries.

[1] Secretary Hughes to Senator Lodge, Washington, January 15, 1924, in the *Congressional Record*, LXV, Pt. II, p. 1325.

[2] The text of the general claims convention is published in the *Congressional Record*, LXV, Pt. II, p. 1322–1323, and of the special claims convention, p. 1323–1324. Both conventions are hereinafter printed, p. 431, 436.

[3] *Treaties, Conventions . . . between the United States and other Powers*, I, p. 1132.

Cordial Relations, September, 1923, to November, 1925

From the signing of the two claims conventions with Mexico in September, 1923, until November, 1925, the diplomatic relations between the United States and Mexico were scarcely, if ever, more cordial. Proof of this is seen in the very generous material and moral support which the Government of the United States lent to the Obregón Government during the De la Huerta revolution of 1923–1924, and in its very positive acts of hostility toward the revolutionists.[1] If further proof were necessary attention might be called to the hearty welcome, both official and unofficial, that was accorded to President-Elect Calles during his visit to the United States shortly before his inauguration on November 30, 1924. The only evidence of discordant relations between the two Governments in this period is to be seen in the statement of Secretary Kellogg on June 12, 1925, that Mexico was "on trial before the world," that conditions in that country were "unsatisfactory," and that the United States would continue to support President Calles "only so long as American lives and rights are protected in Mexico."[2] That incident, apparently, was soon forgotten.

In October, 1925, as a fitting climax to the cordial relations then existing between Mexico and the United States, the Mexican Government and the International Committee of Bankers on Mexico came to a mutually satisfactory agreement with reference to the resumption of interest payments on the external debt of Mexico. When that agreement was reached it may safely be asserted that there was not so much as a cloud on the horizon of the diplomatic relations of the United States and Mexico.

Bases for New Diplomatic Controversies, 1925

So hopeful a situation as that described above was not to be prolonged into the year 1926. Before final adjournment on January 1, 1926, the Mexican Congress passed two laws, known as

[1] See articles relating to Mexico by the present writer in *Current History*, XIX (February–March, 1924), p. 852–853; 962–963.

[2] Statement of Secretary Kellogg in the New York *Times*, June 13, 1925.

the alien land law and the petroleum law.[1] Alien land legislation in itself in 1925 should have occasioned no surprise. What the Mexican Congress did was simply to get around, after eight years, to the passing of legislation that is designed to put into operation the unfulfilled constitutional provisions relating to the curbing of foreign influence in Mexico which were crowded into Art. 27 of the Constitution of 1917 along with the provisions relating to agrarian reforms and the nationalization of subsoil deposits. More specifically, between May, 1917, and December, 1925, there had been no regulatory action taken, either by presidential decree or by congressional legislation, to put into operation the alien land provisions of Art. 27.

Similarly, during the same period, there had been no congressional legislation designed to put into operation Sec. IV of Art. 27 which nationalizes subsoil deposits. Instead, all such regulation of that constitutional provision prior to December, 1925, had been by presidential decrees. What the Mexican Congress did in December, 1925, as far as its petroleum legislation is concerned, was to "issue the organic law regulating the application of Art. 27," the lack of which law — provided that it was "in accordance with the accepted principle of nonretroactivity" — was the basis for a complaint by Mr. Warren to the Mexican commissioners in the conference of May 16, 1923.[2]

The constitutional authorization for the alien land law, which, in contradistinction to the petroleum law, is entirely new legislation, is to be found in the following provisions of Art. 27 of the Constitution of 1917:

> Only Mexicans by birth and naturalization and Mexican associations have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, waters or mineral

[1] For the text of these two laws see *infra*, p. 414 and 425. The alien land bill, sponsored by President Calles, was submitted to the Chamber of Deputies on September 30, 1925, and was passed by that body on November 13. The Mexican Senate on December 18 passed the bill in a form slightly different from that passed by the Chamber of Deputies. Five days later (December 23), the Chamber of Deputies having concurred in the Senate amendments, the bill received final Congressional sanction. It was officially promulgated in the *Diario Oficial* on January 21, 1926. Meanwhile the petroleum bill had been passed by the Mexican Congress on December 18, 1925, and had been promulgated on December 31, 1925, by publication in the *Diario Oficial*.

[2] *Proceedings of the United States-Mexican Commission . . . 1923*, p. 14.

fuels in the Republic of Mexico. The Nation may grant the same right to foreigners, provided they agree before the Department of Foreign Affairs to be considered Mexicans in respect to such property, and accordingly not to invoke the protection of their Governments in respect to the same, under penalty, in case of breach, of forfeiture to the Nation of property so acquired. Within a zone of 100 kilometers from the frontiers, and of 50 kilometers from the sea coast, no foreigner shall under any conditions acquire direct ownership of lands and waters.

The reason for the inclusion of these provisions in the Constitution is not hard to understand. During the Díaz régime the Mexican people had come to resent the notorious practice of the most desirable concessions being given to foreigners. It was during the Díaz administration that the expression originated: "Mexico is the mother of foreigners and the stepmother of Mexicans." Accordingly, to curb the acquisition of property, particularly agricultural property, by foreigners, and to place them on the same legal status with Mexicans with respect to Mexican-owned property, constitutional provision was made that foreigners must first agree to consider themselves Mexicans in respect to such property. Phipps says: "There was nothing new about this provision, however. Practically all such contracts, from the era of independence down to the end of the rule of Díaz, contained a similar clause; the only novelty was its having been incorporated into the Constitution. Under Díaz the clause had been wholly ineffective."[1]

Controversy over the Alien Land Bill

Diplomatic correspondence between the Governments of Mexico and the United States with reference to the new Mexican legislation was commenced on October 29, 1925. On that date the Department of State, through the American ambassador, submitted to the Mexican Foreign Office certain specific inquiries concerning the meaning and interpretation of the alien land bill in the form in which it then stood before the Mexican Congress. Responses to these inquiries were reported by the American ambassador on November 4, 1925. The formal exchanges which have since ensued between the two Governments relating both to

[1] Phipps, *op. cit.*, p. 145.

the alien land law and the petroleum law were released for publication by the Department of State on April 10, 1926.[1]

Two communications were sent by the Department of State to the Mexican Foreign Office with reference to the alien land bill prior to its final passage by the Mexican Congress. In the first, an aide mémoire, dated November 17, Secretary Kellogg disclaimed any desire to criticise "prospective legislation of a neighboring friendly and sovereign State," or "to assume the role of uninvited adviser." But he pointed out that "Americans with acquired rights" in Mexico would appeal against the operation of the proposed law to the United States Government, which would be bound "to do its utmost on their behalf." He expressed the hope that the clouds which he perceived "on the horizon of friendship between the United States and Mexico" might be removed, that "the letter and spirit" of the proceedings of the joint commission of 1923 would be borne in mind, and that nothing would be done which would "tend to affect the good relations between the two countries." At the same time Secretary Kellogg suggested that the time was opportune to negotiate a new and previously suggested treaty of amity and commerce between the United States and Mexico — one which would be "fair and satisfactory to both countries and of lasting benefit to Mexico."[2]

In reply to the above communication of Secretary Kellogg the Mexican foreign minister on November 27 transmitted a statement by President Calles, to whom, at Secretary Kellogg's request, his note of November 17 had been referred. In his reply President Calles expressed the conviction that since Mexico was disposed "to fulfill all obligations put upon it by international

[1] Mimeographed copies of these exchanges were released for publication by the Department of State under the following title: *Correspondence Exchanged between the Governments of the United States and Mexico Regarding the two Laws Regulating Section I of Article 27 of the Mexican Constitution.* This correspondence was published under the title of "Rights of American Citizens in Certain Oil Lands in Mexico" as Sen. Doc. No. 96, 69th Cong., 1st sess., to which the citations below refer. It was also published in *The United States Daily*, in the issues of April 12, 13, 14, and 15, 1926.

[2] "Aide Mémoire of Personal Message from the Secretary of State to the Mexican Minister for Foreign Affairs, presented by the American Ambassador on November 17, 1925," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 3.

law," there was no "cause for perceiving clouds upon the horizon of the friendship between Mexico and the United States." On the assumption, however, that the pending legislation in the Mexican Congress was giving Secretary Kellogg "concern," President Calles offered the following explanatory observations: First, the conferences of the joint commissioners in 1923 "were confined to an exchange of views," the object of which was to find a possible way for the resumption of diplomatic relations between the two countries; they did not result in "any formal agreement other than of the claims conventions which were signed after the resumption of the diplomatic relations." Second, the pending alien land legislation, in conformity with the expressed policy of the Obregón administration to welcome foreigners and capital to Mexico, "has respected in their entirety acquired rights." Third, the object of the legislation was to dispel "the vagueness" which had prevailed in paragraph 1 of Art. 27, and which had been "injurious" to foreigners since 1917.[1]

In a second communication to the Mexican foreign minister on November 27, after he had received a copy of the land bill as passed by the Chamber of Deputies, Secretary Kellogg advised that the bill was viewed with "genuine apprehension by many if not all American holders of property rights in Mexico." This apprehension, he stated, appeared to be "justified," since the bill, apparently, would operate "retroactively with respect to American property interests in Mexico," and, apparently, in its effect upon such property interests, "would be plainly confiscatory." Some of the principal provisions of the bill were indicated, together with his understanding of their effect. With reference to a provision in the bill requiring foreigners to waive their nationality and to agree not to invoke the protection of their respective governments in so far as their property rights are concerned, Secretary Kellogg directed particular attention to the fact that the Government of the United States "has always consistently declined to concede that such a waiver can annul the relations of a citizen to his own Government or that it can operate

[1] "Reply of Mexican Minister for Foreign Affairs, handed to the American Ambassador on November 27, 1925," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 4.

to extinguish the obligation of his Government by diplomatic intervention to protect him in the event of a denial of justice within the recognized principles of international law." [1]

In a memorandum,[2] delivered to the American ambassador on December 7, 1925, the Mexican minister for foreign affairs, by way of reply to Secretary Kellogg, characterized as "extraordinary" the fact "that the American Government should make representations to that of Mexico in regard to pending legislation which, precisely because of being in a formative state, can cause no present harm to American citizens." He further asserted "that within the territory of the United States there exist laws in force" very similar to the one then pending in the Mexican Senate. Specific attention was directed to existing legislation in Illinois which regulates the acquisition of real property by foreigners. This legislation, it was argued, was "more drastic, more conclusive and goes further in its effects than the projected Mexican legislation."[3] An Arizona law was asserted to provide that "no corporation more than 30% of whose shares are in the possession of persons not citizens of the United States or who may have declared their intention of becoming such, may acquire lands,

[1] "Aide Mémoire, handed by the American Ambassador to the Mexican Minister for Foreign Affairs by Instruction from the Secretary of State on November 27, 1925," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 5. For the earlier attitude of the United States on this point see *infra*, p. 412.

[2] "Memorandum of Mexican Minister for Foreign Affairs in reply, dated December 5, 1925. Delivered to the American Ambassador on December 7, 1925," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 7.

[3] "Respecting Illinois, see Alien Act of 1897; also court decision in Meadowcroft *vs.* Winnebago County, 181 Ill. 504, 54 North Eastern Reporter, 949, in which the court stated *inter alia* that it could not see that the Act of 1897 could be applied to this case, 'the title to the property in question having vested prior to its taking effect.' The court held 'Therefore the subsequent act cannot be held applicable here without divesting or impairing vested rights, to hold which would render the act unconstitutional and void.' See also Wunderle *vs.* Wunderle, 144 Ill. 40, 33 North Eastern 195, wherein the Court said, 'But aliens who have acquired lands in Illinois before the Act of 1887 went into force had vested property rights, which could not be confiscated or taken away from them.'" In "Memorandum Regarding the Arizona and Illinois Statutes handed by the Chief of the Division of Mexican Affairs to the Counselor of the Mexican Embassy on December 22, 1925," Sen. Doc., No. 96, 69th Cong., 1st sess., p. 12.

titles or interest therein."[1] Citing precedents in Mexican legislation dating as late as 1899 the Mexican foreign minister argued that no new principle was set forth in the proposed law.

With reference to the provision in the bill requiring a foreigner owning real property in Mexico to agree before the Ministry of Foreign Relations to consider himself as a Mexican in regard to such property, the Mexican minister defended this provision, first, on the ground that it "proceeds from the Mexican Constitution of 1917," and second, that "every nation is sovereign to legislate in the matter of real property within its own territory." The minister also asserted that the provision in question has been "ill-named a renouncement of nationality," whereas "such a renouncement does not exist," and that "the legal provisions . . . in this connection are not obligatory since . . . the foreigner who does not wish to acquire" real property in Mexico "is not obliged to do so." In connection with this provision specific attention was directed by the minister to the Civil Code of Arizona, which it was charged establishes that no person may acquire titles or property in Arizona "*unless he be a citizen of the United States* or have declared previously his intention of becoming such."[2] Specific attention was also directed by the minister to the fact that a number of corporations, including certain oil companies, since 1917 have "inscribed in their charters and upon their bonds" the provision requiring foreign holders of such bonds to waive any right of appeal to their respective Governments—thereby "anticipating" what the proposed law established. The Mexican minister defended at length a provision of the bill which puts a

[1] "Regarding Arizona, see the provisions of Section 4716 of the Arizona Civil Code of 1913, relating to alien ownership of real estate, wherein the restrictions are expressly stated to refer to future acquirements," in "Memorandum Regarding the Arizona and Illinois Statutes handed by the Chief of the Division of Mexican Affairs to the Counselor of the Mexican Embassy on December 22, 1925," *loc. cit.*

On January 28, 1926, Secretary Kellogg advised Minister Sáenz that "Both the Illinois law of 1897 and the provisions of the Arizona Civil Code of 1913, relating to alien ownership of real estate are expressly made to apply to future acquisitions of real property and do not apply to property already acquired." See "Note of Secretary of State to Mexican Minister for Foreign Affairs, dated January 28, 1926," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 21.

[2] See preceding note on Arizona.

limitation upon the rights of inheritance on the ground that such "is in strict conformity with international law since, in such cases, there are no acquired rights, but merely an expectation of acquiring them."

Protest against Petroleum Law

The diplomatic controversy between the Governments of the United States and Mexico concerning the alien land bill, which was finally passed by the Mexican Congress on December 23, 1925, was extended and made more serious by the passage on December 18 and the promulgation on December 31 of the petroleum law. This law was made the principal subject of a note[1] presented on January 8, 1926, by Ambassador Sheffield, under instructions from Secretary Kellogg, to the Mexican minister for foreign affairs. In substance the following objections were pointed out with reference to the petroleum law:

1. Failure of the law "to give full recognition to rights lawfully acquired prior to the adoption of the present Mexican Constitution" when owners of the surface were expressly designated as the owners of the deposits under the surface. 2. Failure of the law in several regards "to respect decisions of the Supreme Court of Mexico in the interpretation of the very constitutional provisions which the law is apparently designed to regulate in that those decisions hold in effect that such constitutional provisions are not retroactive and inapplicable to those whether corporations or individuals who performed any one of a number of what are denominated as 'positive acts.'" 3. Apparent contradiction of the law "to the statements made by the Mexican commissioners in the conference . . . in 1923 as to the past, present and future policy of the Mexican Government to grant preferential rights to the owners of the surface or persons entitled to exercise their preferential right to the oil in the subsoil who have not performed a 'positive act.'"

The second objection was emphasized by the statement that the Government of the United States was "unable to escape the conclusion that the petroleum law . . . violates rights lawfully

[1] "Note Presented by American Ambassador to Mexican Minister for Foreign Affairs, under Instructions of the Secretary of State, on January 8, 1926," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 13.

acquired under provision of Mexican law, of the present Mexican Constitution, recent decisions of the Supreme Court of Mexico and pledges solemnly given but two years ago by designated representatives of the Mexican Government," with respect to surface owners who had performed "positive" acts that were indicative of their intention to exploit subsoil deposits.

In protesting against the petroleum law the Government of the United States again went on record as declining to concede that the waiver by an American citizen of his nationality can annul the relation between himself and his Government "or that it can operate to extinguish the obligation of his Government to protect him in the event of a denial of justice." Finally the Mexican Government was advised that the Government of the United States reserved on behalf of its citizens "whose property interests are or may hereafter be affected by the application of the two above-mentioned laws, all rights lawfully acquired by them under the Constitution and laws of Mexico in force at the time of the acquisition of such property interests and under the rules of international law and equity."

Development of Controversies over Alien Land and Petroleum Laws

The controversy between the Governments of Mexico and the United States, concerning the alien land and petroleum laws was not to be confined to formal correspondence which, for the time being, was not made public. Two days after the receipt of Ambassador Sheffield's note of January 8, Minister Sáenz vigorously asserted the right of the Mexican people "to pass such legislation as they see fit as an independent nation and to exercise full rights of sovereignty." He declared that in case the alien land and petroleum laws "are applied to American interests, these interests have the right of appeal to the Mexican courts," but he added that "it will be necessary to wait until the laws are enforced and applied in order to provide concrete cases, as with other legislation."[1]

Eleven days later (January 19) the Mexican Embassy in Washington made public a long public statement by Minister Sáenz.

[1] *New York Times*, Jan. 11, 1926.

In this statement Minister Sáenz cited for the land law historical and legal precedents dating from the Mexican colonial period to recent times; made frequent comment on fundamental principles of international law which he claimed were involved; and contrasted and compared the law with various laws in force in the United States. By exhaustive legal reasoning Minister Sáenz argued that the law is neither retroactive nor confiscatory in character, that it provides legal means for the protection of foreign investors in Mexico, and that by the law foreigners are placed on equal legal standing with Mexicans.[1]

In a statement issued to the press on January 20, Secretary Kellogg asserted that Minister Sáenz's statement of the preceding day comprised "no facts or arguments which have not been fully dealt with in the official exchanges between the two governments." He stated that the position of the United States Government "has been and still is that the so-called land and petroleum laws contain provisions which are plainly retroactive and confiscatory in their effect upon property rights legally acquired and held by American citizens in Mexico under prior existing laws." Secretary Kellogg denied that this position in any sense questioned "Mexico's sovereign rights to legislate on her domestic concerns."[2]

The formal correspondence between the two Governments over the disputes in question was renewed on January 20 when Minister Sáenz replied[3] to Ambassador Sheffield's note of January 8. In answer to the charge that the petroleum law did not recognize the rights of owners of surface lands acquired before the promulgation of the constitution to the deposits under the surface, Minister Sáenz argued as did the Mexican commissioners in 1923, namely, that "a right may not be acquired except by its exercise." With reference to the second objection of Ambassador Sheffield, to the petroleum law, Minister Sáenz argued in substance as follows: Art. 14 of the petroleum law protects in various ways those owners who may have performed "positive acts" before the going into effect of the Constitution of 1917. Arts. 5

[1] *New York Times*, Jan. 20, 1926.

[2] *Ibid.*, Jan. 21, 1926.

[3] "Note in reply of Mexican Minister for Foreign Affairs, dated January 20, 1926," Sen. Doc., No. 96, 69th Cong., 1st sess., p. 15.

and 6 of the land law grant to alien owners of real property in the prohibited zones, "not devoted to purposes of agriculture," the right to retain such property until their death. Art. 15 of the petroleum law, which requires owners of surface lands who may have performed the requisite "positive acts," to apply for confirmation of their rights within a year, is, in fact "beneficial" to the owners, "inasmuch as it gives them the right to have a title emanating from the government."

In answer to Ambassador Sheffield's third objection to the petroleum law, Minister Sáenz quoted from the minutes of the Joint commission of August 2, 1923, to show that the decision of President Obregón to grant "preferential rights" to owners of surface lands who had not performed "positive acts" was "not intended to establish an obligation for an unlimited time on the part of the Mexican Government."

With reference to Ambassador Sheffield's emphasized assertion that the petroleum law violates the rights of owners of surface lands who may have performed "positive acts," Minister Sáenz argued extensively that the law in question did not and could not modify decisions of the Supreme Court, and further, that there was nothing in the Supreme Court decision that restricted the power of Congress "to enact laws which it may believe expedient." Minister Sáenz a second time argued that the provision of the law requiring alien property owners to waive their rights of appeal to their respective Governments with respect to such property did not constitute a "renunciation of nationality since the alien retains his own nationality," while the Constitution requires aliens who may acquire certain properties "to consider themselves as nationals" only with respect to such properties.

In conclusion Minister Sáenz directed attention to the fact that Art. 11 of the alien land law and Art. 22 of the petroleum law specifically empower the Executive to issue regulations of both laws. Assurance was given that in issuing these regulations the Executive would do so "taking into account, not only the express content of the laws but also the precepts of international law, and of justice and equity as well." Since "legislation in the subjects indicated" could only be complete "when the regulations shall have been issued," until such regulations were issued, Minister

Sáenz argued that it would not be possible "to judge whether they violate or respect and protect the rights of the nation as well as private individuals whether nationals or aliens." In this connection the assertion was made that "a diplomatic representation is not considered appropriate in connection with the enactment of a law, but that it is only justified when the enforcement of such law involves an injury."

Eight days after Minister Sáenz had delivered the above reply to Ambassador Sheffield, Secretary Kellogg addressed another note[1] to Minister Sáenz (January 28), and on February 12 the latter replied to it.[2] Satisfaction was expressed by Secretary Kellogg in his note because of the avowed intention of the Mexican Executive to regulate the alien land and petroleum laws in such a manner that their application would not be retroactive in character. Admission was also made of the right of Mexico as a sovereign state "to make laws governing the acquisition of property acquired in the future," And concern and a desire for guaranties were expressed only with respect to "property rights in Mexico duly and legally acquired by American citizens under laws existing at the time of the acquisitions." Minister Sáenz, in reply to this point, expressed satisfaction with these declarations — particularly with "the most explicit recognition" of the "absolute right of Mexico to enact such laws as it may deem expedient"[3] — "because they involve points of view which are common to the Governments of Mexico and the United States . . . wherefore the entire question is reduced to determining whether or not the laws under consideration are retroactive in their application or whether they assail or respect rights previously acquired."

In short, as a result of Secretary Kellogg's note of January 28 and Minister Sáenz's reply of February 12, the very significant mutual understanding was reached that both Governments up-

[1] "Note of Secretary of State to Mexican Minister for Foreign Affairs, dated January 28, 1926," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 21.

[2] "Note in reply of the Mexican Minister for Foreign Affairs, dated February 12, 1926," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 28.

[3] In this connection Minister Sáenz referred to an opinion rendered by former Chief Justice Marshall of the United States Supreme Court in which the following statements were made: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself."

held the principle, as later expressed by Secretary Kellogg, "that Mexico should not enact laws which in their application are retroactive in respect of rights legally acquired by aliens under laws existing at the time the property or property right was acquired."[1]

While in accord as regards the above principle the character of the two last-mentioned notes is mainly controversial with references to points of view previously expressed in earlier correspondence between the two Governments. Secretary Kellogg reiterated the denial by the United States Government of the right of a citizen of the United States to waive "what is known as diplomatic protection." Minister Sáenz, by way of reply, admitted that "an individual may not compel the state of which he is a citizen to refrain from asserting a right that belongs to it." At the same time he defended the requirement in the Mexican laws that an alien must consider himself a Mexican with respect to Mexican-owned property on the ground that such an obligation was "assumed individually . . . between the contracting party and the Mexican Government," and in no wise infringed "upon any of the rights of the foreign state."

Art. 4 of the alien land law, which requires an alien who might own at the time of the going into effect of the law 50% or more of the stock of a company owning agricultural property in Mexico to dispose of the amount in excess of 50% within ten years, was declared by Secretary Kellogg to be "manifestly retroactive." In his reply Minister Sáenz drew a distinction between "aliens, if physical persons," who are permitted to "retain integrally their rights until their death," and corporations "which are shareholders in Mexican corporations owning real property for agricultural purposes," which are only permitted to "hold the aforesaid rights for ten years, since under the Constitution of 1917, foreign corporations can not acquire real property in the Republic." In this connection the assertion was made that the laws of eight states of the United States set a limit "for the retention of property rights already acquired which is exactly the principle of Mexican law." It was asserted that in these states an alien not domiciled therein cannot acquire real property "ex-

[1] "Note of the Secretary of State to the Mexican Minister for Foreign Affairs, dated March 1, 1926," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 35.

cept if he be an heir of an alien who may have previously acquired the property; but even in this case he must divest himself of the inherited property within a period varying from three to six years."[1]

With reference to the petroleum law Secretary Kellogg in his note of January 28, restated what had been the consistent stand of the United States as regards the petroleum question, namely that lands acquired in Mexico prior to May 1, 1917, entitle the owners of those lands to the subsoil deposits; he also expressed the hope that the authorized presidential regulations, when issued, would "confirm the rights of the owners of the subsoil who had, prior to the going into effect of the Constitution of 1917, acquired rights in accordance with the decisions of the Supreme Court of Mexico and had performed positive acts as defined in the declarations and agreements made by the Mexican Government under date of August 2, 1923, during the negotiations of that year." Quoting extensively from the decisions of the Supreme Court of Mexico in the Texas Oil Company case, the statements of the Mexican commissioners during the meeting of August 2, 1923, and subsequent correspondence between the two Governments, Secretary Kellogg pointed out the possibility of a "threatened conflict" between the above-cited statements and "the construction and interpretation to be placed on Art. 14" of the petroleum law which makes provision for the confirmation of rights acquired prior to the going into effect of the Constitution of 1917. This article, it was pointed out, authorized the President of Mexico to "confirm . . . acquired rights in accordance with the decision of the Supreme Court." Secretary Kellogg maintained, however, "that the exchange of a present title for a concession having a limited duration does not confirm the title," that this can only be brought about "by regulations in harmony with the Supreme Court decision," and that "anything less than a confirmation does not grant the owner in the language of the Supreme Court of Mexico, without the necessity of a permit from any authority the rights to appropriate such products of the subsoil and does not enable the owner to transmit his acquired rights as he would any other property."

[1] The states which Minister Sáenz mentioned in this connection are Illinois, Arizona, Kansas, Kentucky, Minnesota, Oklahoma, Missouri and Washington.

In answering this point raised by Secretary Kellogg, Minister Sáenz stated that since Art. 14 of the petroleum law "provides that the rights acquired before it [the Constitution] went into effect will be confirmed in accordance with the terms therein set forth, there can be no doubt that the regulations to be issued by the Executive will cause that provision to be fulfilled, and therefore the rights acquired in accordance with the laws of 1884, 1892 and 1909 will be confirmed." This statement was modified by an elaborate exposition of the same distinction which had been made by the Mexican commissioners in 1923 between a fully acquired right, definitely consummated by the performance of some "positive act," and a mere optional right. In the latter case it was argued that "no right was acquired" until the owner of the surface land "had performed some act looking to said appropriation." In this connection Minister Sáenz quoted from one of the communications of the Mexican Foreign Office to the United States Government just prior to the recognition of the Obregón Government in 1923 to show that it was the understanding at that time "that the conferences of 1923 were not a condition for the recognition of the Government of Mexico."[1] Finally, Minister Sáenz reiterated "the declarations of the Mexican Commissioners in the sense that, in conformity with Art. 14, there will be granted to owners, concessionaires or other persons having rights to petroleum, permits to drill in their respective lands." To grant such a concession, Minister Sáenz maintained,

[1] In a later note, dated March 1, 1926, Secretary Kellogg stated that "for the purposes of clarification" he desired to call attention "to the fact that the proceedings of the American and Mexican commissioners were approved by President Coolidge and that the request was made by this Government that it be advised that President Obregón approved the statements set forth in the Report made by the Mexican commissioners and that in the event that the statements were so approved, a certain line of procedure should be approved for the purpose of the resumption of diplomatic relations." See "Note of the Secretary of State to the Mexican Minister for Foreign Affairs, dated March 1, 1925," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 35.

Secretary Hughes is authority for the statement that "the [Mexican] minister of foreign affairs replied through the Mexican Embassy in Washington on August 25 [1923] to the effect that General Obregón approved the declarations made by the commissioners. This exchange of communications completed the understandings reached in the conferences as set forth in the minutes, and was followed by the resumption of formal diplomatic relations between the United States and Mexico and the signing of the general and special claims conventions." See letter of Secretary Hughes to Senator Lodge, Washington, January 15, 1924, *Cong. Rec.*, LXV, P. II, p. 1325.

"in exchange for an actual title is to confirm the latter, because the granting of the concession will have no other foundation than respect for the former."

In conclusion Minister Sáenz expressed satisfaction at being able to report: "The President is convinced . . . that in the regulations of the laws which we have just been considering there will be defined all points which have been the object of explanations between the two Governments."

Termination of the Diplomatic Controversies

The diplomatic correspondence between the United States and Mexico with respect to the alien land and petroleum laws that was made public on April 10 was terminated in March. On the first day of the latter month Secretary Kellogg replied [1] to Minister Sáenz's note of February 12; on March 27 Minister Sáenz replied [2] to Secretary Kellogg's last note. On the basis of the previously reached "accord in principle" that "Mexico should not enact laws . . . retroactive in respect of rights legally acquired by aliens," Secretary Kellogg, in his note of March 1, propounded a number of questions "as to how the Mexican Government regards, in their practical application, some of the provisions of the alien land law." In fact the final note of Secretary Kellogg deals almost entirely with the provisions of the latter law. With reference to the petroleum law Secretary Kellogg's remarks were directed primarily to the securing of assurance that the authorized Presidential regulations of the petroleum law, when issued, would "confirm the right of American citizens in whatever form the property may be held without added burdens in all cases where the positive acts," described by the Mexican commissioners in the conference of August 2, 1923, and by Minister Sáenz in his note of January 20, 1926, "have been performed."

The first question was with reference to Art. 1 of the land law which prohibits any alien from either acquiring direct ownership in lands and waters in territory within 100 kilometers of the inter-

[1] "Note of the Secretary of State to the Mexican Minister for Foreign Affairs, dated March 1, 1926," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 35.

[2] "Note in Reply of the Mexican Minister for Foreign Affairs, dated March 27, 1926," Sen. Doc. No. 96, 69th Cong., 1st sess., p. 40.

national boundaries or 50 kilometers of the seacoasts, or being a shareholder in a Mexican company which may acquire such ownership in the prohibited zones. The question concerning this provision was whether the article applied "to an alien who had acquired, or had an interest in any kind of company that had acquired, direct ownership in lands and waters within the prohibited zones prior to the promulgation of the law on January 21, 1926," and whether the article was considered "to apply to mining, transportation, industrial companies and other enterprises not involving the direct ownership in lands and waters."

In answer to this query Minister Sáenz in his note of March 27 stated that Art. 1 of the land law "is not retroactive;" that it will not "be given retroactive effect in its application," — that is, that it did not "refer to an alien" with property rights as described by Secretary Kellogg; and that it did not refer to companies or enterprises mentioned by Secretary Kellogg as having "no direct ownership in lands and waters."

Secretary Kellogg's second query was whether "an alien who, prior to the promulgation of the law, had acquired an interest in a Mexican company," would be required to comply with Art. 2 of the land law. This article prescribes the method by which "an alien may form part of a Mexican company which may have or may acquire domain over lands, waters and their appurtenances, or concessions for the exploitation of mines, waters, or combustible minerals," namely, that he agrees before the Ministry of Foreign Relations, first, to regard himself as a Mexican in respect to his share in the company, and second, not to invoke, in respect thereto, the protection of his own Government, under penalty of forfeiting the property in question to the Mexican nation. In his reply Minister Sáenz stated that "Art. 2 is not retroactive in its application," that it did not require compliance by aliens "who, prior to the promulgation of the law had acquired an interest in a Mexican company," and that its provisions were to be complied with "hereafter . . . by any alien wishing to join a Mexican company holding rights to the things referred to in Art. 2."

Art. 3 of the land law specifies that aliens may be only minority shareholders in "Mexican companies owning rural property for agricultural purposes." Concerning this article Secretary Kellogg inquired whether it was "retroactive in the sense that it will be

necessary for an alien, who possesses an interest in a Mexican company acquired prior to the promulgation of this law, to apply for any permit." Minister Sáenz, in denying that Art. 3 is retroactive, stated categorically that an "alien who, before the promulgation of the law held an interest in a Mexican company does not need to apply for any permit."

Secretary Kellogg's comment upon Art. 4 of the land law and Minister Sáenz's corresponding rejoinder show that it was mutually understood that "an alien who prior to the going into effect of the law represented 50% or more of the total interest of any kind of association holding rural property for agricultural purposes may retain the said interest without any need of a permit or without complying with Art. 2 and that the right of his heirs to such interest in excess of 49% is provided for in Art. 6." In the case of foreign corporations owning stock in a Mexican corporation, Secretary Kellogg said that it was his understanding that "the government of Mexico maintains that such corporate interest shall be disposed of on or before ten years from the date of the promulgation of the law." With reference to this point Minister Sáenz stated, however, that Art. 4 requires foreign companies holding stock in Mexican companies to dispose "of the said corporate interest in excess of 49% within the term of ten years." This, he explained, did not "mean that the law is given retroactive effect in its application, since it has to do with an act in the future and not with an act in the past; but if any dispute should arise on that point . . . as to whether or not the law under the terms last mentioned is retroactive, it would be for the courts to determine it in accordance with the provision of Art. 14 of the Constitution."

Art. 5 of the land law provides that "the rights which are the object of the present law, not comprised in the foregoing article and acquired legally by aliens prior to the going into effect thereof, shall be conserved by their present owners until their death." Concerning this article Secretary Kellogg inquired whether rights legally acquired before the law went into effect were to be "conserved by their present owners until their death without the seeking of any permit under the terms of Art. 2 and by their heirs under the provisions of Art. 6." Minister Sáenz's answer was that the Mexican Government was of the opinion "that Art. 5

is not retroactive, because the rights acquired by aliens prior to the going into effect of the law shall be conserved by the present owners until their death without applying for any permit under Art. 2 and by their heirs in accordance with the terms of Art. 6."

With reference to a prior inquiry as to whether mining, transportation, industrial companies and other enterprises not involving the direct ownership in lands and waters are covered by Art. 1 of the land law, Minister Sáenz repeated that Art. 1 "does not include" the above-mentioned companies and enterprises "which have not the ownership over lands and waters."

Art. 7 of the land law provides that aliens who may have acquired any right prior to the date that the law may go into effect must declare the same before the Department of Foreign Relations within one year after the promulgation of the law or suffer the penalty of having it considered that "the acquisition was made subsequent to the promulgation of this law." With reference to this article Secretary Kellogg inquired whether its provisions "are in antithesis to the provisions of Art. 2 and that an alien who has acquired a right before the law went into effect, which otherwise would come within the terms of the law, is only required to make a declaration before the Department of Foreign Relations within one year following the date of the promulgation of the law which in effect gives notice of his prior acquired rights thus bringing the application of the law within the principle of nonretroactivity of legislation? And that such declaration will merely be a statement of his existing right and title?" Minister Sáenz's reply was that aliens who had acquired property rights "that come under the law" prior to its going into effect, "only have to make a declaration before the Department of Foreign Relations within one year following the date of promulgation, which declaration must be a statement of such rights previously acquired. The terms in which the said declaration is made must be specified by the regulations since the law does not say in what form it has to be made."

The above was the last of the categorical questions with reference to the land law that was submitted by Secretary Kellogg to Minister Sáenz on March 1 and answered by the latter on March 27. The remainder of the discussion in these two notes is mainly controversial as regards matters previously debated. Secretary

Kellogg again denied "the inability of an individual citizen of the United States to make any contract or declaration which would be binding upon his own government not to invoke its right under the rules of international law to extend diplomatic protection;" he reiterated his previous argument that "an injury done by one state to a citizen of another state through a denial of justice, should there be a denial, is an injury done to the state whose national is injured," even though the national should have made a previous waiver of diplomatic protection. By way of reply to this assertion Minister Sáenz stated that in case an individual did waive his right to appeal for diplomatic protection to his Government, "the Government does not forfeit the right to extend it in case of a denial of justice; but this is independent of the consequences that a private person may incur through failing to comply with an obligation assumed by him."

The provisions of the petroleum law, as already noted, were not discussed at length by Secretary Kellogg and Minister Sáenz in their final notes of March 1 and March 27, respectively. Secretary Kellogg referred to the "positive acts" enumerated by Minister Sáenz in his note of January 20, which enumeration "is confined to cases in which petroleum exploration work has begun or contracts have been entered into for the purpose of carrying out such exploitation," and in reply Minister Sáenz gave assurances "that in the regulations on the subject the rights to the subsoil held by American citizens who had performed any of the positive acts enumerated in my note of January 20 will be confirmed." Secretary Kellogg expressed the hope that the presidential regulations of the petroleum law when issued "will confirm the rights of American citizens in whatever form the property may be held without cost or added burdens in all cases where the positive acts" enumerated in Minister Sáenz's note of January 20 have been performed. Secretary Kellogg added that "this Government cannot understand why reference is made to an exchange of title when the object is to confirm the titles already held in cases where such positive acts have been performed." In reply to this point Minister Sáenz gave assurances that the "confirmation of rights to the subsoil" would not prejudice any person but rather would "serve to avoid disputes among persons" holding such rights.

Secretary Kellogg concluded his note as follows:

This Government expresses the hope in the most friendly manner that in view of the statement in your Excellency's note of February 12 that "there can be no doubt that the regulations to be issued by the Executive will cause that provision to be fulfilled and, therefore, the rights acquired in accordance with the laws of 1884, 1892 and 1909 will be confirmed" in cases where positive acts of the nature specified in the declaration of August 2, 1923, and in your Excellency's note of January 20, 1926, have been performed, the Mexican Government will be able to assure this Government that the rights of American citizens in respect of certain products of the subsoil, where positive acts of a nature have been performed, will be confirmed.

Conclusions Regarding Controversies over Alien Land and Petroleum Laws

In summing up the results of the extended and voluminous correspondence between the Governments of the United States and Mexico concerning the new Mexican alien land and petroleum laws, the following facts are outstanding:

First. The most persistently controverted point was with reference to the provision in each law which requires foreigners to waive their nationality and to agree not to invoke diplomatic protection in so far as Mexican-owned property is concerned. In the last four communications to the Mexican Foreign Office the United States Government consistently declined to admit that such a waiver can annul the relations of a citizen to his own Government or that it can nullify the obligation of a Government to accord diplomatic protection to one of its nationals in case of a denial of justice. In reply the Mexican Government was equally as insistent in defending the requirement in the two laws that an alien must consider himself a Mexican with respect to Mexican-owned property on the ground that such an obligation was "assumed individually . . . between the contracting party and the Mexican Government," and in no wise infringed "upon any of the rights of a foreign state." The Mexican Foreign Minister did admit, however, that "an individual may not compel the state of which he is a citizen to refrain from asserting a right that belongs to it."

Second. A very significant admission, and one most heartily appreciated by the Mexican Government, was made by Secretary Kellogg in his note of January 28, 1926, as follows: "Every sovereign state has the absolute right within its own jurisdiction to make laws governing the acquisition of property acquired in the future. This right cannot be questioned by any other state."

Third. An equally significant explanation, and one which was promptly followed up by the United States Government, was made by Minister Sáenz in his note of February 12, as follows: "The entire question is reduced to determining whether or not the laws under consideration are retroactive in their application or whether they assail or respect rights previously acquired."

Fourth. The two last-cited statements made possible, as already noted, the mutual understanding that both Governments upheld the principle of the nonretroactivity of laws with respect to alien rights legally acquired. It was on the basis of this common understanding that Minister Sáenz in his final note asserted that the controverted articles in the land law were not retroactive and gave assurances that the petroleum regulations, when issued by the Executive, would confirm the "rights to the subsoil held by American citizens who had performed" the required "positive acts."

Fifth. The formal correspondence, while controversial in character, is, somewhat in contradistinction to the several statements issued to the press by the two secretariats, altogether friendly in tone.

Present Status [May, 1926] of Alien Land and Petroleum Laws

Two days after Minister Sáenz's last-mentioned note, namely, on March 29, the alien land law was given final form. On the latter date President Calles, under authority granted by Art. 11 of the law itself, issued the regulations therefor.[1] These regulations do not differ materially from the the fundamental principles of the law as passed by Congress. In some details the provisions of the law are made more specific in the regulations. However, apparently some concessions have been made in the interpretation or regulation of some of the provisions of the law itself which were regarded as prejudicial to foreign property

[1] For the regulations of the alien land law see *infra*, p. 414.

rights in Mexico. Very significant is the provision in Article 18 that "none of the provisions of this law or of these regulations will have retroactive effect to the prejudice of anyone."

The above provision seems to remove the basis of the complaint of the Department of State against the alleged retroactive provisions of the law; at the same time it seems to confirm the assurances given since January by President Calles and Foreign Minister Sáenz that the regulations, when issued, would not be retroactive in character.

Apparently another favorable concession to foreign property owners in Mexico is the provision made in Art. 11 of the regulations that in cases where an alien shall acquire rights by inheritance, the acquisition of which might be legally prohibited, the time limit of five years in which the alien is required to dispose of such property, may, for any valid difficulty, be extended "for the length of time necessary to eliminate the difficulty."

Also Art. 3 of the regulations makes it unnecessary for the numerous foreign stockholders in Mexican corporations to present in person before the Ministry of Foreign Relations written waivers of the right to invoke diplomatic protection with respect to Mexican-owned property. The law requiring such waivers, may, by the presidential regulations, be complied with by the above waiver being "printed or engraved in the titles or certificates of shares." The acquisition of such shares, "through this fact alone," will be considered as an acceptance of the above waiver. By Art. 4 of the regulations, existing Mexican corporations which may desire to "transfer shares or allow participation of foreigners," are required "to adopt as an integral part of the documents and statutes" of the corporation the provisons of the above waiver.

The Presidential regulations concerning the petroleum law were officially promulgated April 8. Soon after the passage of this law attorneys of American petroleum companies operating in Mexico and representatives of the Mexican Government began a series of conferences in an effort to reach a mutually satisfactory agreement with respect to the regulations which the law authorizes President Calles to issue. Despite the confidently expressed predictions of President Calles,[1] Foreign Minister Sáenz,[2] Minister

[1] *New York Times*, Feb. 6, 1926.

[2] *Ibid.*, Feb. 8, 1926.

of Industry, Commerce and Labor Luis Morones[1] that such an agreement would be reached, a virtual deadlock developed in the conference by March 25 with the result that the attorneys for the petroleum companies returned to the United States.

Since the publication of the formal correspondence between the United States and Mexican Governments concerning the alien land and petroleum laws on April 10 no official acknowledgment has been made that the United States Government is satisfied with the understandings effected thereby. From Washington it was unofficially reported on April 11[2] that neither Government expects any further fundamental disagreements and that the United States Government may rely upon interpretations of the Mexican courts, or the correspondence may be renewed with reference to remaining points requiring clarification.

Enforcement of Religious and Educational Provisions of Constitutional Art. 27

Finally, not content with these new laws which tardily put into operation formerly unfulfilled provisions of Art. 27 designed to curb foreign influence in Mexico and nationalize subsoil deposits, the Mexican Government decided last February to carry the revolutionary program still further by putting into operation, through presidential decree, the wholly unfulfilled provisions to be found principally in Art. 27 which are designed to effect religious and educational reforms. The last cited constitutional provisions are as follows:

> Religious institutions known as churches irrespective of creed, shall in no case have legal capacity to acquire, hold or administer real property. . . . Places of public worship are the property of the nation, as represented by the Federal Government, which shall determine which of them may continue to be devoted to their present purpose. Episcopal residences, rectories, seminaries, orphan asylums or collegiate establishments of religious institutions, convents, or any other buildings built or designed for the administration, propaganda, or teaching of any religious creed shall forthwith pass, as of full right, to the legal ownership of the Nation.

[1] *New York Times*, Jan. 17, 1926.

[2] *Ibid.*, April 12, 1926.

. . . No ministers of religious creeds shall . . . criticize the fundamental laws of the country, the authorities in particular or the Government in general.

The decision of the Mexican Government to enforce the above constitutional clauses was first made known on February 11. The Attorney General announced on that date that orders had been issued for the arrest and deportation of all foreign priests and that all church property, not already in the possession of the nation, had been nationalized.

The religious and educational provisions of the Constitution became operative at once. As a result, a total of 202 foreign-born clericals, principally Catholics, who were functioning in Mexico in spite of constitutional inhibitions against such actions on their part, had been deported by March 15.[1] Secretary of State Kellogg on March 2 advised the House Foreign Relations Committee that orders had been issued for the expulsion from Mexico of three American Catholics, four American Protestants, and several American members of the Church of the Latter Day Saints. He stated that he assumed that in each case the expulsion orders had been issued "on the ground that they are teaching in violation of the Constitution and laws of Mexico."[2] All of the above orders had been revoked by March 12 on condition that the religious workers would henceforth observe the provisions of the Constitution. One of the members of a Catholic religious order, Madame Margaret Semple, declined to remain in Mexico under such conditions and returned to the United States to protest against the Constitution and laws of Mexico to the House Foreign Relations Committee on March 31.[3]

In connection with the nationalization of churches it should be held in mind that the Constitution of 1857, as amended in 1901, nationalized all property of "religious corporations and institutions" except that which was intended directly and exclusively for the purposes of the institution. The Constitution of 1917, however, went further and even nationalized the churches as well as all property that still remained in their possession. Since 1917

[1] *New York Times*, March 16, 1926.

[2] *Ibid.*, March 7, 1926.

[3] *Ibid.*, March 31, 1926.

the Mexican Government has frequently asserted and exercised the right of ownership over particular churches, but the declaration of the Mexican Attorney General on February 11, 1926, was the first move of the Mexican Government to completely nationalize all church property in Mexico as provided for by the Constitution of 1917.

Likewise, many religious institutions, as schools, convents, and orphan asylums, which were giving religious instruction in violation of Art. 27 of the Constitution and laws of Mexico, were temporarily closed, but later were permitted to reopen with the understanding that all religious instruction would be eliminated. The enforcement against Catholics of the religious and educational provisions of the Constitution provoked bitter criticism of the Calles Government by dignitaries of the Catholic Church in the United States and prompted a demand by Representative Boylan of New York on March 4 that the United States withdraw recognition from the Calles Government.

The only official action taken by the Department of State with reference to the new policy of the Calles Government concerning religious instruction in Mexico was to request the Mexican authorities, in a note delivered on March 9,[1] to see that American churchmen should not be made to suffer unduly in the enforcement of the religious and educational provisions of the Constitution. From Mexico City it was reported on March 12[2] that the danger of complications between the two Governments over these matters had been dissipated as a result of the above-indicated accommodating spirit shown by the Mexican Foreign Office in revoking earlier orders for the expulsion of American religious teachers who agreed in the future to observe the provisions of the Mexican Constitution.

Conclusion

A Christian Spaniard, Luis Sánchez, in 1566, protested to the Spanish Government against "the cruel and unjust wars which the Spaniards have waged and are waging against the Indians, killing, robbing, and attacking them, and driving them from their

[1] *New York Times*, March 10, 1926.

[2] Boston *Transcript*, March 12, 1926.

land."[1] The enlightened Bishop of Michoacán, in a letter[2] to the Spanish king in 1804, deplored the sad fate of the Mexican Indians. In 1867 a renowned Mexican historian said: "The story of the native race is a story of tears and suffering."[3] A doctoral dissertation,[4] accepted at Columbia University last June, states that the condition of the Mexican masses "was far worse in 1910 than it had been in 1810." By 1910, due, in large measure, to the selfish and inhumanitarian policies of Díaz, three-fifths of the Mexican people were in a revolting state of human slavery and serfdom. Since 1915, however, beginning with Carranza, the Mexican leaders have been attempting the herculean task of elevating Mexico from a medieval feudal state to a modern, self-governing, self-respecting nation.[5]

Slavery was abolished in the United States in 1865. We profess to believe in the rights of small nations. If we really want to help in the realization of our ideals there is no better opportunity than that offered by Mexico. First of all, however, we have got to know the Mexican problem and what its leaders are really trying to do. If the people of the United States really understood these things there would be no Mexican problem in this country, save how to cooperate with Mexico.

In the second place, we must be patient with Mexico. The Anglo-Saxon people secured their human liberties and rights centuries ago, and for that reason it is hard for us to appreciate the

[1] "Memorial que dio el bachiller Luis Sanches residente en Chillaron de Pareja al presidente Espinosa en Madrid á 26 de agosto de 1566," in C. W. Hackett (ed.), *Historical Documents relating to New Mexico, Nueva Vizcaya, and Approaches thereto, to 1773* (Washington, 1923), Vol. I, p. 158.

[2] Abad y Quiepo, M., "Representación a nombre de los labradores y comerciantes de Valladolid de Michoacán," in José María Luis Mora, *Obras sueltas* (Paris, 1836), Vol. I, p. 84.

[3] Pimentel, F., *Memoria sobre* las *causas que han originado la situación actual de la raza indigena de Mexico* (Mexico, 1864), p. 44.

[4] That of Phipps, *op. cit.*, p. 132.

[5] McBride (*op. cit.*, p. 159) said in 1923: "Again, the term 'agrarian revolution' is justified by the results being obtained. No other great reform is being accomplished. 'Effective suffrage,' 'no re-election,' 'Mexico for the Mexicans,' and other such slogans are little nearer realization today than in the time of Díaz. But land is being given to the people . . . and under their [De la Huerta, General Calles, and Obregón] direction progress has been made toward a real agrarian reform." Since McBride wrote, Mexico's educational program has yielded very beneficent results. The outcome of the more recent reform program as outlined in these pages remains to be seen.

fact that the Mexicans have begun to secure their human rights and liberties only since 1910. Mexico has a long way to go from the serfdom of yesterday to the democracy of tomorrow. Whether Mexico does or does not reach the latter goal will in large measure depend upon the degree of forbearance on our part and the degree of mutual understanding and cooperation between the peoples and the Governments of the two countries. Mexico has made admitted mistakes and has indulged in admitted excesses since 1910; but so did the French in the course of their famous revolution. The hopeful thing is that in 1923 all of the very serious and prolonged misunderstandings were satisfactorily adjusted or placed in the process of being adjudicated. There is reason to hope for as good results in the future.

DOCUMENTS

1. LAND DECREE ISSUED BY FIRST CHIEF CARRANZA ON JANUARY 6, 1915, AT VERA CRUZ[1]

ARTICLE 1. The following are hereby annulled:

I. All the sales of lands, water rights and forests pertaining to townships, small settlements, congregations or communities, made by political prefects, governors of states or any other local authorities, contrary to the provisions of the law of June 25, 1856, and all other laws and provisions relating thereto.

II. All concessions, composition agreements or sales affecting lands, water rights and forests, made by the Departments of Fomento, Hacienda or by any other Federal authorities, since December 1, 1876, to date, by which community, partition or any other kind of lands, pertaining to townships, small settlements, congregations or communities, may have been illegally invaded and occupied.

III. All proceedings relative to survey and demarkation carried into effect during the period of time mentioned in the preceding section by companies, judges or other authorities of the States or federation, by which lands, water rights or forests within a community, partition or any other kind of lands, belonging to townships, small settlements, congregations or communities, may have been illegally invaded or occupied.

ART. 2. The division or distribution which may have been made lawfully among neighbors of townships, small settlements, congregations or communities, and in which there may be some flaw, shall only be annulled whenever it is so requested by two-thirds of the neighbors or their representatives.

ART. 3. The towns which may need, not having them, their community lands, or which may be unable to secure their restoration, because of their lack of title, difficulty of identification, or because they may have been legally disposed of, shall be able to secure a sufficient portion of land to reconstruct their community lands in accordance with the necessities of their townships, the National Government expropriating the necessary lands to that effect from those immediately adjoining the townships in interest.

[1] *The Mexican Review*, II, No. 8 (May, 1918), p. 36.

ART. 4. For the purpose of this and other agrarian laws which may be enacted, in accordance with the political program of the Revolution, there shall be created:

I. A National Agrarian Commission of nine persons, who, presided over by the Secretary of Fomento, shall have the powers which this and subsequent laws may provide.

II. A local agrarian commission of five persons for each State and Territory of the Republic, which will have the powers provided by law.

ART. 5. The special executive committees shall depend in each State from the respective agrarian commission of the locality, which, in its turn, shall be subordinate to the National Agrarian Commission.

ART. 6. The requests for the restoration of lands pertaining to townships which may have been invaded or occupied illegally, referred to in Art. 1 of this law, shall be presented in the States directly to the governors, and in the Territories and the Federal District, to the higher political authorities, but in the event that lack of communication or a state of war would hamper the action of the local governments, the petitions may also be submitted to the military chiefs, who may be authorized especially to that effect by the person in charge of the executive power. These petitions shall be accompanied by the documents upon which they are based. There shall be presented also before the same authorities petitions relating to land concessions in order to allot community lands to the townships which may not have them, or which may not have sufficient title to justify their rights of recovery.

ART. 7. The proper authority, in view of the petitions which may be filed, shall consult the local agrarian committee regarding the justice of the recovery and upon the convenience, necessity and extension of the concessions of lands to make the allotment of community lands, and shall decide whether or not the restoration or concession should remain. In the case that it does, the record shall be sent to the proper private executive committee, to the end that, when the lands are identified, outlined and surveyed, the same shall be provisionally delivered to the interested parties.

ART. 8. The decisions of the governors or military chiefs shall be considered provisional, but they shall be immediately executed by the private executive committee, and the record with all its documents and other data which may be considered necessary, shall be afterward sent to the local agrarian commission, which, in its turn, shall send it to the National Agrarian Commission with a report thereon.

ART. 9. The National Agrarian Commission shall decide upon the approval, rectification or amendment of the decisions brought to its attention, and in view of the resolution passed by the person in charge of the executive power of the nation, shall sanction the recovery or allotments which may have been decided, issuing the proper titles.

ART. 10. Persons who may consider themselves injured by the decision of the person in charge of the executive power of the nation have the right to resort to the courts within one year from the date of the above-mentioned resolutions, but when this term has expired, no claim shall be admitted. In the case that the claims refer to recoveries and the person in interest obtains a judicial decision declaring that the restoration is made in favor of a township, the decision shall only bind the Government of the nation to the extent of giving the indemnity which may correspond. Within the same term of one year the owners of expropriated lands shall appear and demand the indemnities, which shall be paid to them.

ART. 11. A regulatory law shall determine the condition in which the lands restored or adjudged in behalf of townships shall remain, and the manner and time in which they shall be distributed among the neighbors, who, in the meantime, shall enjoy their possession in common.

ART. 12. The governors of States, or, as the case may be, the military chiefs of each region authorized by the person in charge of the executive power, shall at once appoint a local agrarian commission and the private executive committees.

Transitory Article. This law shall go into effect from the date of its publication, so long as the present civil strife does not end. Military authorities shall cause the present law to be published and posted in each of the cities and places they may occupy.

2. DECREE REQUIRING FOREIGNERS TO RENOUNCE THEIR NATIONAL PROTECTION WHEN ACQUIRING RIGHTS TO CERTAIN REAL PROPERTY IN THE REPUBLIC OF MEXICO[1]

[Translation.]

A seal reading: "Ministry of state and office of fomento, colonization, and industry, Mexico, office of the private secretary, No. 81."

The first chief of the constitutionalist army in charge of the executive power, considering that as a consequence of our fundamental laws whereby foreigners must enjoy in Mexico the same privileges as the Mexicans, it is natural and legitimate that they should have the same obligations, with a view that the liberality of our democratic institutions should not be understood nor carried to the extreme that foreigners, as owners of property in Mexico, be in better juridical conditions than Mexicans, as it

[1] *Investigation of Mexican Affairs.* Hearings before a Subcommittee of the Committee on Foreign Relations, United States Senate, 66th Cong., 2nd sess., 1920, p. 3173.

has unfortunately happened and which would occur if they, besides the enjoyment of the rights, actions and resources offered by the Mexican laws in regard to property and its juridical relations, could formulate claims before their respective Governments; the same first magistrate of the Republic, in view of the extraordinary faculties in him vested, has seen fit to direct the establishment of the following dispositions, obligatory in all the Republic:

First. Foreigners pretending to acquire real estate or national lands, mining claims, waters of Federal jurisdiction, or permit for the exploration or exploitation of the natural riches, as forestal products, oil, fisheries, etc., in the Republic of Mexico, shall present beforehand in writing, before the ministry for foreign affairs, a formal express declaration that in their capacity as proprietors or concessionaries and for all the effects and relations of the property which they desire to acquire, they consider themselves Mexicans, waiving their rights as foreigners and privileges of appeal for protection or claim to their respective Governments.

Foreign corporations can not acquire rights on any of the properties specified in this circular, unless they nationalize and submit to the Mexican laws making the aforementioned declaration.

Second. It is an indispensable requirement for the ministry of fomento, colonization, and industry in order to admit any denouncement or application made by a foreigner on any of the matters referred to in the previous article, even for a simple permit for exploration, that he should present to it with the first communication a certificate issued by the ministry for foreign affairs, bearing the declaration mentioned in the previous disposition.

Without this requirement the application must be refused emphatically, and all proceedings made before the presentation of this certificate will be null and void.

There shall appear in all property titles, as well as in the permits on the properties aforementioned, which should be granted by the ministry of fomento to foreigners, as well as in the contracts or deeds authorized by public notaries, the full text of the certificate prescribed in the first disposition, besides the reproduction of the text thereof as a special clause. Failure to insert the certificate or that clause will cause the annulment of the title, permit, contract or respective deed.

Third. In all matters already moved by foreigners which may be before the ministry of fomento or its administrative agencies with relation to any of the properties referred to in this disposition, the proceedings will be suspended and shall not be renewed until the presentation by the interested parties of the certificate in question. If within the period of four months beginning from the date these dispositions the certificate is not presented by the interested parties they shall be regarded as de-

sisting from their purpose and their applications will be filed, the interested parties not having a right of appeal against this resolution.

The present dispositions are obligatory in all the Republic of Mexico and shall be published in *El Diario Oficial*, for its knowledge and due compliance, and shall be in force on the day of its issuance.

Constitution and reforms, Mexico, August 15, 1916.

The subsecretary in charge of the office of the ministry of fomento, colonization and industry.

PASTOR ROUAIX.

3. POLITICAL CONSTITUTION OF THE UNITED STATES OF MEXICO[1]

TITLE I, CHAP. 1. — OF PERSONAL GUARANTIES

ART. 27. The ownership of lands and waters comprised within the limits of the national territory is vested originally in the nation, which has had and has the right to transmit title thereof to private persons, thereby constituting private property.

Private property shall not be expropriated except for reasons of public utility and by means of indemnification.

The nation shall have at all times the right to impose on private property such limitations as the public interest may demand as well as the right to regulate the development of natural resources, which are susceptible of appropriation, in order to conserve them and equitably to distribute the public wealth. For this purpose necessary measures shall be taken to divide large landed estates; to develop small landed holdings; to establish new centers of rural population with such lands and waters as may be indispensable to them; to encourage agriculture and to prevent the destruction of natural resources, and to protect property from damage detrimental to society. Settlements, hamlets situated on private property and communes which lack lands or water or do not possess them in sufficient quantities for their needs shall have the right to be provided with them from the adjoining properties, always having due regard for small landed holdings. Wherefore, all grants of lands made up to the present time under the decree of January 6, 1915, are confirmed. Private property acquired for the said purposes shall be considered as taken for public use.

In the nation is vested direct ownership of all mineral or substances which in veins, layers, masses or beds constitute deposits whose nature is different from the components of the land, such as minerals from which

[1] *The Mexican Review*, Vol. I, No. 6, p. 4.

metals and metaloids used for industrial purposes are extracted; beds of precious stones, rock salt and salt lakes formed directly by marine waters, products derived from the decomposition of rocks, when their exploitation requires underground work; phosphates which may be used for fertilizers; solid mineral fuels; petroleum and all hydrocarbons — solid, liquid or gaseous.

In the nation is likewise vested the ownership of the waters of territorial seas to the extent and in the terms fixed by the law of nations; those of lakes and inlets of bays; those of interior lakes of natural formation which are directly connected with flowing waters; those of principal rivers or tributaries from the points at which there is a permanent current of water in their beds to their mouths, whether they flow to the sea or cross two or more States; those of intermittent streams which traverse two or more States in their main body; the waters of rivers, streams or ravines, when they bound the national territory or that of the States; waters extracted from mines; and the beds and banks of the lakes and streams hereinbefore mentioned, to the extent fixed by law. Any other stream of water not comprised within the foregoing enumeration shall be considered as an integral part of the private property through which it flows; but the development of the waters when they pass from one landed property to another shall be considered of public utility and shall be subject to the provisions prescribed by the States.

In the cases to which the two foregoing paragraphs refer, the ownership of the nation is inalienable and may not be lost by prescription; concessions shall be granted by the Federal Government to private parties or civil or commercial corporations organized under the laws of Mexico, only on condition that said resources be regularly developed, and on the further condition that the legal provisions be observed.

Legal capacity to acquire ownership of lands and waters of the nation shall be governed by the following provisions:

I. Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, waters or mineral fuels in the Republic of Mexico. The nation may grant the same right to foreigners, provided they agree before the Department of Foreign Affairs to be considered Mexicans in respect to such property, and accordingly not to invoke the protection of their Governments in respect to the same, under penalty, in case of breach, of forfeiture to the nation of property so acquired. Within a zone of 100 kilometers from the frontiers, and of 50 kilometers from the sea coast no foreigners shall under any conditions acquire direct ownership of lands and waters.

II. The religious institutions known as churches, irrespective of creed, shall in no case have legal capacity to acquire, hold or administer real

property or loans made on such real property; all such real property or loans as may be at present held by the said religious institutions either on their own behalf, or through third parties, shall vest in the nation, and any one shall have the right to denounce property so held. Presumptive proof shall be sufficient to declare the denunciation well-founded. Places of public worship are the property of the nation, as represented by the Federal Government, which shall determine which of them may continue to be devoted to their present purposes. Episcopal residences, rectories, seminaries, orphan asylums or collegiate establishments of religious institutions, convents or any other buildings built or designed for the administration, propaganda or teaching of the tenets of any religious creed shall forthwith vest, as of full right, directly in the nation, to be used exclusively for the public services of the Federation or of the states, within their respective jurisdictions. All places of public worship which shall later be erected shall be the property of the nation.

III. Public and private charitable institutions for the sick and needy, for scientific research, or for the diffusion of knowledge, mutual aid societies, or organizations formed for any other purpose shall in no case acquire, hold or administer loans made on real property, unless the mortgage terms do not exceed ten years. In no case shall institutions of this character be under the patronage, direction, administration, charge or supervision of religious corporations or institutions, nor of ministers of any religious creed or of their dependents, even though either the former or the latter shall not be in active service.

IV. Commercial stock companies shall not acquire, hold or administer rural properties. Companies of this nature which may be organized to develop any manufacturing, mining, petroleum or other industry, excepting only agricultural industries, may acquire, hold or administer lands only in an area absolutely necessary for their establishments or adequate to serve the purposes indicated, which the Executive of the Union or of the respective state in each case shall determine.

V. Banks duly organized under the laws governing institutions of credit may make mortgage loans on rural and urban property in accordance with the provisions of the said laws, but they may not own nor administer more real property than that absolutely necessary for their direct purposes; and they may furthermore hold temporarily for the brief term fixed by law such real property as may be judicially adjudicated to them in execution proceedings.

VI. Properties held in common by co-owners, hamlets situated on private property, pueblos, tribal congregations and other settlements which, as a matter of fact or law, conserve their communal character, shall have legal capacity to enjoy in common the waters, woods and lands belonging to them, or which may have been or shall be restored

to them according to the law of January 6, 1915, until such time as the manner of making the division of the lands shall be determined by law.

VII. Excepting the corporations to which Clauses III, IV, V and VI hereof refer no other civil corporation may hold or administer on its own behalf real estate or mortgage loans derived therefrom, with the single exception of buildings designed directly and immediately for the purposes of the institution. The states, the Federal District and the territories, as well as the municipalities throughout the Republic, shall enjoy full legal capacity to acquire and hold all real estate necessary for public services.

The Federal and state laws shall determine within their respective jurisdictions those cases in which the occupation of private property shall be considered of public utility; and in accordance with the said laws the administrative authorities shall make the corresponding declaration. The amount fixed as compensation for the expropriated property shall be based on the sum at which the said property shall be valued for fiscal purposes in the cadastral or revenue offices, whether this value be that manifested by the owner or merely impliedly accepted by reason of the payment of his taxes on such a basis, to which there shall be added ten per cent. The increased value which the property in question may have acquired through improvements made subsequent to the date of the fixing of the fiscal value shall be the only matter subject to expert opinion and to judicial determination. The same procedure shall be observed in respect to objects whose value is not recorded in the revenue offices.

All proceedings, findings, decisions and all operations of demarkation, concession, composition, judgment, compromise, alienation or auction which may have deprived properties held in common by co-owners, hamlets situated on private property, settlements, congregations, tribes and other settlement organizations still existing since the law of June 25, 1856, of the whole or a part of their lands, woods and waters, are declared null and void; all findings, resolutions and operations which may subsequently take place and produce the same effects shall likewise be null and void. Consequently all lands, forests and waters of which the above-mentioned settlements may have been deprived shall be restored to them according to the decree of January 6, 1915, which shall remain in force as a constitutional law. In case the adjudication of lands, by way of restitution be not legal in the terms of the said decree which adjudication shall have been requested by any of the above entities, those lands shall nevertheless be given to them by way of grant, and they shall in no event fail to receive such as they may need. Only such lands, title to which may have been acquired in the divisions made by virtue of the said law of June 25, 1856, or such as may be held in undisputed ownership for more than ten years are excepted from the provision of nullity,

provided their area does not exceed 50 hectares. Any excess over this area shall be returned to the commune and the owner shall be indemnified. All laws of restitution enacted by virtue of this provision shall be immediately carried into effect by the administrative authorities. Only members of the commune shall have the right to the lands destined to be divided and the rights to these lands shall be inalienable so long as they remain undivided; the same provision shall govern the right of ownership after the division has been made. The exercise of the rights pertaining to the nation by virtue of this article shall follow judicial process; but as a part of this process and by order of the proper tribunals, which order shall be issued within the maximum period of one month, the administrative authorities shall proceed without delay to the occupation, administration, auction or sale of the lands and waters in question, together with all their appurtenances, and in no case may the acts of the said authorities be set aside until final sentence is handed down.

During the next constitutional term, the Congress and the state legislatures shall enact laws, within their respective jurisdictions, for the purpose of carrying out the division of large landed estates subject to the following conditions:

(*a*) In each state and territory there shall be fixed the maximum area of land which any one individual or legally organized corporation may own.

(*b*) The excess of the area thus fixed shall be subdivided by the owner within the period set by the laws of the respective locality; and these subdivisions shall be offered for sale on such conditions as the respective governments shall approve, in accordance with the said laws.

(*c*) If the owner shall refuse to make the subdivision, this shall be carried out by the local government, by means of expropriation proceedings.

(*d*) The value of the subdivisions shall be paid in annual amounts sufficient to amortize the principal and interest within a period of not less than 20 years, during which the person acquiring them may not alienate them. The rate of interest shall not exceed 5% per annum.

(*e*) The owner shall be bound to receive special bonds to guarantee the payment of the property expropriated. With this end in view the Congress shall issue a law authorizing the states to issue bonds to meet their agrarian obligations.

(*f*) The local laws shall govern the extent of the family patrimony, and determine what property shall constitute the same on the basis of its inalienability; it shall not be subject to attachment nor to any charge whatever.

All contracts and concessions made by former governments from and after the year 1876 which shall have resulted in the monopoly of lands, waters and natural resources of the nation by a single individual or

corporation, are declared subject to revision, and the Executive is authorized to declare those null and void which seriously prejudice the public interest.

4. ATTITUDE OF UNITED STATES TOWARD MEXICAN JURISDICTION OVER AMERICAN NATIONALS[1]

[Telegram, plain.]

DEPARTMENT OF STATE,
WASHINGTON, D. C., January 19, 1917.

WALTER THURSTON, Esq., *Representing American interests, Mexico City.*

Advise appropriate authorities that Government of the United States can not regard provisions of decrees of August 15 and December 15, 1916, as annulling the relations existing between it and its citizens who may acquire properties in Mexico or as affecting its rights and obligations to protect them against denials of justice with respect to such properties.

LANSING.

[Paraphrase. Telegram.]

DEPARTMENT OF STATE,
WASHINGTON, D. C., January 31, 1919.

American Embassy, Mexico City:

1842. The Department refers to the representations made through Thurston to the Mexican Government pursuant to the Department's telegram of January 19, 1917.

You are instructed to advise the Foreign Office that the American Government maintains the position relative to the provisions in the Mexican Constitution and laws of Mexico in which foreigners are required to waive their rights as nationals with respect to property purchased by them in Mexico, that such provisions annul the relations existing between this Government and its citizens who may acquire property in Mexico, and it further maintains the position that such provisions above referred to affect its rights and obligations to protect them against the denials of justice with respect to such properties.

POLK, *Acting.*

[1] *Investigation of Mexican Affairs*, p. 3174.

5. THE AGRARIAN PROBLEM

a. Understandings of the American and Mexican Commissioners, 1923[1]

[Both groups of commissioners stated their cases at length, the American statements being made on June 1 and July 19 and Mexican statements on June 4 and July 20, 1923. The following extract from the minutes of July 20 is a formal summary of the substance of those statements.]

In conclusion, and in view of what has been stated above, the Mexican Commissioners in behalf of the Mexican Government made the following statements:

1. The question of the division of lands is not made the subject of a particular statement here, for the reasons already stated.

2. The Mexican Government does not maintain that the acceptance of federal bonds in payment for expropriation for *ejidos* of a certain area shall be regarded as an acceptance on the part of the Government of the United States of the principle that payment in bonds can be made for the expropriation of lands or other property for any other purpose.

3. According to the law of January 10, 1920, and the regulations thereunder dated January 26, 1922, bonds will be issued for the payment of *ejidos*. These bonds will bear interest at the rate of 5% per annum from the time of the taking of the land and will be made payable in 20 years. Not less than 1/20th part of the total amount of bonds issued and outstanding shall be paid each year the bonds to be so paid each year being determined substantially by lot as provided in such regulations. Said bonds will be accepted by the Government at par value in payment for public or national lands; in payment for interest due on contracts for the purchase or for the price of lands granted to villages as *ejidos* and sold to the residents; and as security in all those cases in which, by virtue of a contract or concession, a deposit is or may be required in bonds of the public debt. For the payment of the aforesaid bonds and coupons attached thereto the Government will apply, not excluding other sources of revenue, all the revenues coming into the Treasury from the sale of lands expropriated for *ejidos* by the Government to the residents of the respective localities. These revenues shall not be used by the Government for any other purpose. In addition, the coupons will be accepted by the Federal Government in payment of any federal tax.

[1] *Proceedings of the United States–Mexican Commission convened in Mexico City, May 14, 1923*, p. 43.

The Federal Government intends negotiating a loan in order to pay the indemnities for the lands expropriated for *ejidos*, in cash; and as soon as this loan can be obtained, the Government will call in (*recoger*) and pay in cash at par such part of the aforesaid bonds then outstanding as the proceeds of such loan will pay. In case less than all the bonds issued and outstanding shall be called and paid on any one date, then the bonds thus to be called and paid shall be drawn by lot in the manner above referred to.

In case such loan can not be negotiated, the Government intends to shorten the period of payment of the said bonds, according to the financial possibilities of the Federal Treasury, and to accept the matured bonds and in the meantime to accept annually ½0th part of the outstanding bonds in payment for all kinds of federal taxes in the same manner as coupons.

4. The Mexican Commissioners understand that in case the two Governments resume diplomatic relations and conclude a general claims convention creating a mixed claims commission, the Government of the United States will forward concurrently with the exchange of ratifications of such general claims convention, a note binding its citizens who are claimants to accept bonds for *ejidos* of a maximum area of seventeen hundred and fifty-five (1755) hectares on the terms and conditions and with the provisions referred to in Mr. Warren's statement in behalf of the American Commissioners.

5. Owners who are citizens of the United States, in whatever form their interest may be held, who may have suffered losses or damages because of acts resulting in injustice in carrying out the expropriation of lands for *ejidos*, shall have recourse to a general claims commission having a general jurisdiction under the terms provided by the convention creating such a general claims commission.

6. The Mexican Government has ordered the restitution of all property and rights confiscated or wrongfully taken from their owners during the revolution. Nevertheless, if in any case it is shown that a property or right of a citizen of the United States so confiscated or wrongfully taken has not been restored, the Mexican Government will issue the necessary orders for the immediate restitution, where possible, of said property or right.

b. Organic Law of Sec. I of Art. 27 of the Constitution, approved by the Mexican Congress on December 31, 1925 [1]

Plutarco Elias Calles, constitutional President of the United Mexican States to the inhabitants thereof,

[1] Translation of the Mexican Embassy.

Greeting

Let it be known that the Hon. Congress of the Union has seen fit to address to me the following Decree:

THE CONGRESS OF THE UNITED MEXICAN STATES, decrees:

ARTICLE 1.[1] No alien shall acquire direct domain over lands and waters in a strip of 100 kilometers along the frontiers and of 50 on coasts nor be a shareholder in Mexican companies which may obtain such domain in the same strip.

ART. 2.[2] In order that an alien may form part of a Mexican company which may have or may acquire domain over lands, waters and their appurtenances, or concessions for the exploitation of mines, waters or combustible minerals in the territory of the Republic, he shall satisfy the requirements set out in the same Sec. I of Art. 27 of the Constitution to wit: that of agreeing before the Department of Foreign Relations to consider himself national in respect of the part of the property which pertains to him in the company; and not to invoke, in respect thereof, the protection of his government with reference thereto, under penalty in case of failing in the agreement, of losing for the benefit of the nation the property which he may have acquired or which he may acquire as a shareholder in the company in question.

ART. 3.[3] In the case of Mexican companies owning rural property for agricultural purposes the permit spoken of in the foregoing article shall not be granted when through the acquisition to which the permit refers, there remains in the hands of aliens 50% or more of the total interests of the company.

[1] "Art. 1 . . . is not retroactive, neither will it be given retroactive effect in its application; that is to say, it does not refer to an alien who had acquired or had an interest in any kind of a company that had acquired direct ownership in lands and waters within the forbidden zone prior to the promulgation of the said law. . . . My government considers that it does not refer to mining, transportation, industrial companies or other enterprises that have no direct ownership in lands and waters." (Note of Mexican minister for foreign affairs, March 27, 1926 *Rights of American Citizens in Certain Oil Lands in Mexico*, p. 40, Sen. Doc. No. 96, 69th Cong., 1st sess.)

[2] "Said Art. 2 is not retroactive in its application, because it does not require compliance by aliens who, prior to the promulgation of the law, had acquired an interest in a Mexican company, since the provision under consideration lays down the requisite therein stated in order that hereafter it be complied with by any alien wishing to join a Mexican company holding rights to the things referred to in Art. 2." (Note of Mexican minister, *ibid.*, p. 40.)

[3] "Art. 3 is not retroactive because the alien who, before the promulgation of the law, held an interest in a Mexican company does not need to apply for any permit." (Note of Mexican minister, *ibid.*, p. 41.)

ART. 4.[1] Foreign persons who may represent since prior to the going into effect of this law 50% or more of the total interests of any kind of companies owning rural property for agricultural purposes shall retain it until their death in the case of physical persons, or for ten years in the case of moral persons (corporations).

The provisions of this article shall not affect contracts of colonization concluded by the Federal Government prior to the going into effect of this law.

ART. 5.[2] The rights which are the object of the present law, not comprised in the foregoing article and acquired legally by aliens prior to the going into effect thereof, shall be conserved by their present owners until their death.

ART. 6. When an alien person should have to acquire by inheritance rights the acquisition of which might be prohibited to aliens by the law, the Department of Foreign Relations shall give permit, in order that there be made the adjudication and that there may be registered the respective deed. In case any alien person should have to have adjudicated to himself by virtue of a pre-existing right acquired in good faith, a right to those which are prohibited to him by the law, the Department of Foreign Relations will grant the permit for such adjudication.

In both cases the permit shall be granted upon the condition of transferring the rights in question to a person with capacity under the law within a period of five years, counting from the date of the death of the testator in the first case, or from the adjudication in the second.

ART. 7. Aliens who may have any right of those which are the subject matter of this law, acquired before the going into effect of the same,

[1] ". . . An alien who prior to the going into effect of the law represented 50% or more of the total interest of any kind of association holding rural property for agricultural purposes may retain the said interest without any need of a permit, or without complying with Art. 2, and . . . the right of his heirs to such interest in excess of 49% is provided for in Art. 6. . . . Foreign companies holding stock in Mexican companies under the aforesaid conditions . . . must dispose of the said corporate interest in excess of 49% within the term of 10 years; . . . the law is given retroactive effect in its application, since it has to do with an act in the future . . . ; but if any dispute should arise on that point, . . . it would be for the courts to determine it in accordance with . . . Art. 14 of the Constitution." (Note of Mexican minister, *ibid.*, p. 41.)

[2] "Art. 5 is not retroactive, because the rights acquired by aliens prior to the going into effect of the law shall be conserved by the present owners until their death without applying for any permit under Art. 2 and by their heirs in accordance with the terms of Art. 6.

"[Any acquired rights in] mining, transportation, industrial companies, and other enterprises not having the direct ownership in lands and waters, . . . in whatever form held, do not come within the terms of Art. 5, independent of whether the activities in which the alien had an interest prior to the promulgation of the law were conducted within or without the prohibited zones." (Note of Mexican minister, *ibid.*, p. 41.)

shall make a declaration before the Department of Foreign Relations within the year following the date of the promulgation of the present law, upon the understanding that if this is not done it will be considered that the acquisition was made subsequent to the promulgation of this law.

ART. 8. Executed acts and contracts made against the prohibition contained in this law shall be null and void. Failure to comply with Arts. 4 and 6 shall give rights to the auction of the property indicated therein.

ART. 9. This law does not repeal the restrictions placed by special laws on alien persons to acquire rights within the territory of the Republic.

ART. 10. For the effect of this law there shall not be considered as alienation of properties the leases of immovable property for a term greater than ten years to the extent which may be strictly necessary for the establishments or services with an industrial mining, petroleum or other nonagricultural object on the part of the enterprise without prejudice to the provisions of the special laws.

ART. 11. The Executive shall regulate the provisions of this law.

Transitory

ART. 1. This law shall commence to take effect from the date of its promulgation. Pedro C. RODRÍGUEZ, President of the Congress. Eleazar DEL VALLE, President of the Senate. Alfredo ROMO, Secretary of the House of Representatives. J. M. MORA, Secretary of the Senate.

Therefore, I hereby order that the foregoing be printed, published, circulated and that it be given due observance.

Done in the Palace of the Federal Executive Power, in Mexico, this thirty-first day of the month of December, in the year one thousand nine hundred and twenty-five.

(Signed) P. Elías CALLES.

Aarón SÁENZ (signed)
Secretary of Foreign Relations.

c. REGULATIONS GOVERNING THE ORGANIC LAW OF SEC. I OF ART. 27 OF THE CONSTITUTION[1]

. . . . . .

ARTICLE 1. Notaries, judges acting as notaries, Mexican consuls abroad and every other functionary upon whom the duty devolves, must abstain, under penalty of losing their positions or employment, from acknowledging deeds or other instruments in which it is purported

[1] *United States Daily*, April 2, 1926, p. 3.

to transfer to individuals or foreign companies the direct dominion of lands and waters and their appurtenances in a strip 100 kilometers from the frontiers and 50 kilometers from the coast line.

To confer or transfer to individuals or foreign companies any interests or participation as associates in Mexican corporations having direct dominion over lands and waters and their appurtenances in the strips referred to, is prohibited. Those in charge of public registers in all parts of the Republic shall also refrain, under the penalty of losing their positions, from making the registration of deeds or instruments referred to above.

Art. 2. Notaries, judges acting as notaries, Mexican consuls abroad and other functionaries upon whom it devolves, will take care that in all written constitutions of Mexican corporations, whether civil or mercantile, which seek to acquire lands, or those that will have direct dominion over lands or waters outside of the prohibited zones, or concessions for the exploitation of mines, waters and combustible minerals in the Mexican Republic; it be expressly agreed that the foreigners who, upon the act of constituting the corporation, or at any future time, may acquire an interest or participation in the corporation, be considered for this act alone as Mexicans in respect to one or the other; and it shall be understood that he agrees not to invoke the protection of his government, under the penalty, in case of failure to observe this agreement, of losing all interest or participation, for the benefit of the nation.

Those in charge of the public registry throughout the Republic must abstain, under penalty of losing their employment, from registering all incorporation papers which do not comply with this regulation. To this effect, the permit demanded in Sec. I of Art. 27 of the Constitution must be previously requested of the Department of Foreign Relations.

Art. 3. In general, in all cases in which the permit referred to in Sec. I of Art. 27 of the Constitution, may be granted to foreigners, notaries and other functionaries mentioned in Art. 1 of this regulation must insert said permit in the incorporation papers authorized by them, under penalty of losing their office; and the persons in charge of the public registry shall abstain from registering the same under the same penalty, should the papers fail to have this insertion. The Department of Foreign Relations must be advised within ten days of all registrations which are made in the cases referred to by the officials in charge of the office of the public registry.

Art. 4. In cases of stock companies, besides the requirements mentioned in Art. 179 of the Commercial Code, they shall contain the clause referred to in Art. 2, which shall be printed or engraved on the bonds or certificates of shares, to the effect that whoever acquires the shares may understand that by this act alone he accepts the agreement referred to in Art. 2.

Art. 5. Mexican corporations which now exist and which may have dominion over lands, waters or their appurtenances, or concessions to exploit mines, waters or combustible minerals within the Mexican Republic, are obliged, in case they may transfer shares or allow participation to foreigners, to adopt as an integral part of their constitution and by-laws the clause which is referred to in Art. 2, in the same terms as stated therein.

Art. 6. The same corporations, in issuing new shares or certificates, or exchanging them for old shares, or by increasing their capital, or by any other motive, must show in the new certificates the clause referred to. Mexican corporations now existing that have or may have foreign shareholders, and which in the future may acquire or propose to acquire dominion over lands and waters and their appurtenances or concessions for exploiting mines, waters or combustible minerals within the Mexican Republic, will comply with all clauses of this article, previously requesting permission from the Department of Foreign Relations.

Art. 7. Mexican corporations that are organized for the acquisition of rural properties for agricultural purposes, or which are organized to effect such acquisition, are subject to the following regulations:

(I) Acquisition can not be effected when 50% or more of the capital or partnership interest is owned by foreigners.

(II) Should the corporation be based on shares, these must have the character of being nominative, transferable through ordinary cession or simple indorsement, and will not be registered when any change in the documents or shares is made in favor of foreigners, nor will the alienations have any effect whatever when by virtue of the same 50% or more of the shares may be in the hands of foreigners.

Art. 8. In accordance with Sec. IV. of Art. 27 of the Constitution, Mexican corporations to which it refers, constituted to exploit whatever industry — manufacturing, mines, petroleum or any other industry which is not agricultural — even though they may be constituted in whole or in part by foreigners, may acquire, possess or administer lands within or beyond the prohibited zone, but only to the extent that is strictly needed for the carrying out or operation of the objects indicated, and which the Executive of the Union or those of the states may fix in each case, but always with the previous permission which is specified in Art. 2 of this law.

Art. 9. Foreigners who may have acquired, previous to the promulgation of the law hereby being regulated, but after May 1, 1917, 50% or more of the interest or the capital stock of whatever Mexican corporations owning rural properties for agricultural purposes, may preserve such interests until their death.

In the case of foreign corporations possessing 50% or more of the interest or capital stock in one of the aforementioned Mexican corpo-

rations, any title secured before the promulgation of the law referred to, but after May 1, 1917, said foreign corporation may continue this participation if it does not exceed 50%; but is obliged to relinquish the excess within the limit of ten years, counting from the date of the law referred to.

Art. 10. In the case of Art. 5 of the law, if the holder of the rights therein referred to, be a foreign corporation or a Mexican corporation with foreign stockholders, these rights may be conserved by the corporation for the full time of its existence, in accordance with its constitution and by-laws.

Art. 11. In the cases mentioned in the second paragraph of Art. 6 of the law, if it is impossible to make the transfer within the time limit stated, because, for instance, of a lawsuit involving the nullity of a will, and these proceedings do not terminate within five years counting from the date of the death of the testator, or because of any other circumstance which makes it impossible, this limit may be extended whenever this circumstance may be unblamable, the Department of Foreign Relations is authorized to prorogue this limit for the term necessary to eliminate the difficulty. The Department of Foreign Relations shall have the same power in any of the cases appearing in the following paragraph.

Art. 12. Whenever it is obligatory, in accordance with these regulations and the law to which they refer, the alienation of real estate, concessions or interests or certain social participations, after the limit set forth for the alienation and extension mentioned in Art. 2, without the proprietor having effected the alienation, the Department of Foreign Relations shall advise the Attorney General of the matter, so that he may institute the proper judicial proceedings, in accordance with the Code of Federal Procedure, until effecting the sale, by auction, of the properties in question.

This sale shall always be carried out by order of the courts. The proceeds of the sale, after deducting the expenses of the proceedings, will be turned over to the foreign owner or to whomever represents his rights, and if he refuses to receive the same, it shall be placed on deposit.

Art. 13. The dispositions of Art. 4 of the law and those relating to these regulations shall have no effect upon contracts of colonization entered into by the Federal Government prior to the promulgation of the law. Neither will they affect contracts which the Government may make in the future for the division of large tracts for colonization purposes.

Art. 14. The manifestations which are referred to in Art. 7 of these regulations must contain:

(1) Name, surname, or name of the partnership, and the home address of the owner or owners;

(2) The character and description of the property or rights therein manifested;

(3) The description of the title of acquisition necessary for the purpose of identification, including the date.

Art. 15. The forms for the manifestation shall be distributed by the municipal presidents throughout the Republic in sufficient number so that all the foreigners residing in the respective districts may have an opportunity to enter their manifestations. The manifestations must be submitted in duplicate to the Department of Foreign Relations, which shall return to the manifestant one copy, with the date of its presentation, so that he may use it for his protection.

Art. 16. The declaration of nullification established in Art. 8 of the law shall be made by the competent Federal Court at the request of the public ministry, acting under the instructions of the Department of Foreign Relations. In all cases the interested parties shall be heard.

Art. 17. Foreigners who come to the country as colonists pursuant to the colonization laws, and those who are brought by colonization agencies authorized by the Government, shall have power to acquire real estate within the zone of 100 kilometers from the frontiers and of 50 kilometers from the coasts whenever they comply with the following provisions:

(I) When the extent of the land does not exceed 250 hectares for each person, if it is irrigated land, nor of 1,000 hectares if it is of another class.

(II) That the acquisition of lands by the colonist be made under the expressed condition that the acquirer shall become a Mexican citizen within a period of six years following the date of the acquisition. Should this condition not be complied with, the Federal Government shall order the sale at public auction of the property in question, unless said property may have been alienated prior to the six years in favor of individuals or companies who are capacitated for such acquirement.

Art. 18. In pursuance to Art. 14 of the General Constitution of the Republic, none of the dispositions of the law nor of these regulations shall be applied retroactively to the prejudice of any person.

Transitory

Art. 1. All shares now in circulation, and only for the effects of future transactions with foreign individuals, shall bear the clause referred to in Art. 2, through the medium of a seal containing such clause. Power is granted to the Department of Foreign Relations, to the embassies, legations and consulates of Mexico abroad to use such seal without cost to those interested.

Art. 2. The present regulations shall go into effect from the date of their publication in the *Diario Oficial* of the Federation.

Therefore, I hereby order that the foregoing be printed, published, circulated and that it be given due observance.

Done in the National Palace of the Federal Executive Power, in Mexico City, on the 22nd day of March, 1926.

P. Elías Calles.

Aarón Sáenz, Secretary of State for Foreign Relations.

To C. Adalberto Tejeda, Secretary of the Interior.

6. THE SUBSOIL AND PETROLEUM PROBLEM

a. Understandings of the American and Mexican Commissioners, 1923 [1]

[Both groups of commissioners stated their cases at length, the American statement being made on May 15 and Mexican statements on May 18 and 19. The following extract from the minutes of August 2, 1923, is a summary of the substance of those statements.]

The Mexican Commissioners stated that the following are natural consequences of the political and administrative program which the Mexican Government has been carrying out, and that they state them in behalf of their Government in connection with the representations relating to the rights of the citizens of the United States of America in respect to the subsoil.

I. It is the duty of the federal executive power, under the Constitution, to respect and enforce the decisions of the judicial power. In accordance with such a duty, the Executive has respected and enforced, and will continue to do so, the principles of the decisions of the Supreme Court of Justice in the "Texas Oil Company" case and the four other similar *amparo* cases, declaring that par. IV. of Art. 27 of the Constitution of 1917 is not retroactive in respect to all persons who have performed, prior to the promulgation of said Constitution, some positive act which would manifest the intention of the owner of the surface or of the persons entitled to exercise his rights to the oil under the surface to make use of or obtain the oil under the surface: such as drilling, leasing, entering into any contract relative to the subsoil, making investments of capital in lands for the purpose of obtaining the oil in the subsoil, carrying out works of exploitation and exploration of the subsoil and in cases where from the contract relative to the subsoil it appears that the grantors fixed and received a price higher than would have been

[1] *Proceedings of the United States-Mexican Commission convened in Mexico City, May 14, 1923*, p. 47.

paid for the surface of the land because it was purchased for the purpose of looking for oil and exploiting same if found; and, in general, performing or doing any other positive act, or manifesting an intention of a character similar to those heretofore described. According to these decisions of the Supreme Court, the same rights enjoyed by those owners of the surface who have performed a positive act or manifested an intention such as has been mentioned above, will be enjoyed also by their legal assignees or those persons entitled to the rights to the oil. The protection of the Supreme Court extends to all the land or subsoil concerning which any of the above intentions have been manifested, or upon which any of the above specified acts have been performed, except in cases where the documents relating to the ownership of the surface or the use of the surface or the oil in the subsoil establish some limitation.

The above statement has constituted and will constitute in the future the policy of the Mexican Government, in respect to lands and the subsoil upon which or in relation to which any of the above-specified acts have been performed, or in relation to which any of the above-specified intentions have been manifested; and the Mexican Government will grant to the owners, assignees or other persons entitled to the rights to the oil, drilling permits on such lands, subject only to police regulations, sanitary regulations and measures for public order and the right of the Mexican Government to levy general taxes.

II. The Government, from the time that these decisions of the Supreme Court were rendered, has recognized and will continue to recognize the same rights for all those owners or lessees of land or subsoil or other persons entitled to the rights to the oil who are in a similar situation as those who obtained *amparo;* that is, those owners or lessees of land or subsoil or other persons entitled to the rights to the oil who have performed any positive act of the character already described or manifested any intention such as above specified.

III. The Mexican Government, by virtue of the decisions of the President (*acuerdos*) dated January 17, 1920, and January 8, 1921, respectively, has granted and grants preferential rights to all owners of the surface or persons entitled to exercise their preferential rights to the oil in the subsoil, who have not performed a positive act such as already mentioned, showing their intention to use the subsoil or manifested an intention as above specified, so that whenever those owners of the surface or persons entitled to exercise their preferential rights to the oil in the subsoil wish to use or obtain the oil in the said subsoil, the Mexican Government will permit them to do so to the exclusion of any third party who has no title to the land or to the subsoil.

IV. The present Executive, in pursuance of the policy that has been followed up to the present time, as above stated, and within the limita-

tions of his constitutional powers, considers it just to grant, and will continue in the future to grant, as in the past, to owners of the surface or persons entitled to exercise their preferential rights to the oil, who have not performed prior to the Constitution of 1917 any positive act such as mentioned above, or manifested an intention as above specified, a preferential right to the oil and permits to obtain the oil to the exclusion of any third party who has no title to the land or subsoil, in accordance with the terms of the legislation now in force as modified by the decisions of January 17, 1920, and January 8, 1921, already mentioned. The above statement in this paragraph of the policy of the present Executive is not intended to constitute an obligation for an unlimited time on the part of the Mexican Government to grant preferential rights to such owners of the surface or persons entitled to exercise their rights to the oil in the subsoil.

V. The American Commissioners have stated in behalf of their Government that the Government of the United States now reserves, and reserves should diplomatic relations between the two countries be resumed, all the rights of the citizens of the United States in respect to the subsoil under the surface of lands in Mexico owned by citizens of the United States, or in which they have an interest in whatever form owned or held, under the laws and Constitution of Mexico in force prior to the promulgation of the new Constitution, May 1, 1917, and under the principles of international law and equity. The Mexican Commissioners, while sustaining the principles hereinbefore set forth in this statement but reserving the rights of the Mexican Government under its laws as to lands in connection with which no positive act of the character specified in this statement has been performed or in relation to which no intention of the character specified in this statement has been manifested, and its rights with reference thereto under the principles of international law, state in behalf of their Government that they recognize the right of the United States Government to make any reservation of or in behalf of the rights of its citizens.

At 2 o'clock p.m. the Commissioners adjourned until 10 o'clock a.m. the following day, August 3, 1923.

L. Lanier Winslow
Secretary

John Urquida (*sic*)
Secretary

H. Ralph Ringe
Assistant Secretary

b. Law regulating Art. 27 of the Constitution in the Matter of Petroleum[1]

Plutarco Elías Calles, Constitutional President of the United Mexican States, to the inhabitants thereof, know ye:

That the Congress of the Union has been pleased to address to me the following decree:

The Congress of the United Mexican States, decrees:

Law regulating Art. 27 of the Constitution in the matter of petroleum.

Article 1. The direct domain of all natural mixtures of carbons of hydrogen which are found in their natural deposits, whatever may be the physical condition thereof, is vested in the nation. In this law is understood by the word "petroleum" all the natural mixtures of hydrocarbons of which it is composed, which are associated with it or are derived from it.

Art. 2. The direct domain of the nation, to which the preceding article refers, is inalienable and imprescriptible, and only with the express authorization of the Federal Executive, granted as provided in this present law and its regulations, may the works required by the petroleum industry be carried out.

Art. 3. The petroleum industry is of public utility; wherefore it shall enjoy preference as to any utilization of the surface of the land and in all cases in which the necessities of said industry require it, the expropriation and occupation of the surface shall be admissible, having regard to the corresponding legal indemnity.

The petroleum industry includes: the discovery, reduction to possession (*captación*), conveyance by pipe lines and refining of petroleum.

Art. 4. Mexicans and corporations, whether civil or commercial, constituted in conformity with Mexican laws, may obtain petroleum concessions upon compliance with the provisions of this law. Foreigners, in addition to the foregoing obligation, must comply beforehand with what is provided in Art. 27 of the Mexican Constitution in force.

Art. 5. Rights derived from concessions granted in conformity with this law shall not be transferred wholly or in part to foreign Governments or rulers, nor shall such be admitted as associates or co-partners, nor shall any right whatever on such rights be constituted in their favor.

Art. 6. All matters relating to the petroleum industry are of exclusive Federal jurisdiction.

Art. 7. Concessions for exploration entitle the concessionaire to execute developments which have for their object the discovery of petroleum. The Department of Industry, Commerce and Labor shall grant such

[1] Translation of the Mexican Embassy.

concessions and watch over the compliance of the obligations stipulated therein, in accordance with the following bases:

I. The concessionaire shall obtain from the superficiary (*superficiario*) within the first three months of the life of the concession, consent for the occupation of the lands as he may need, and shall execute with him special covenants wherein the form of indemnification is stipulated;

II. In case of opposition of the superficiary, the Department of Industry, Commerce and Labor, shall have power to act as arbitrator if the explorer and the superficiary agree to it. Otherwise, the Federal Executive shall determine upon the occupation of expropriation of the lands, in conformity with the necessities of the petroleum industry, a bond of the concessionaire having previously been furnished, which shall guarantee the indemnification for losses and damages to which the superficiary be entitled;

III. The concessionaire must render to the same Department a quarterly report of the progress of his works and of the result of his exploitation;

IV. Every two years the Department of Industry, Commerce and Labor shall convoke a board which shall determine the boundaries of the "explored zones" in the Republic. This board shall be composed of a representative of the said Department, one from the Department of the Treasury and Public Credit, and another from the petroleum concerns. Within the two years subsequent to the determination of the "explored zones", exploration concessions in other places shall bear the indication of "new zone";

V. During the period of exploration and for three months more, only the explorer shall have the right to present an application for a concession for the exploitation of petroleum claims withiu the explored zone;

VI. The concessionaire must make, in the General Treasury of the Nation within the first month of the life of the concession, a guaranty deposit having regard to the importance and area of the zone which he desires to explore. The Department of Industry, Commerce and Labor will fix the amount of this deposit.

VII. The duration of exploration concessions shall be from one to five years, at the discretion of the Department of Industry, Commerce and Labor, and in accordance with the area and importance of the conceded zone;

VIII. The holder of an exploration concession shall have preference in obtaining a new one for an unprorogable period of five years upon the same zone provided he has complied with all the obligations imposed by this present law; and

IX. Priority of an application gives preference right, other circumstances being equal, over later applications.

Art. 8. Exploitation concessions will be granted upon application and give to the concessionaire the right to reduce the possession (*captar*) and enjoy (*aprovechar*) the petroleum. Priority of an application gives preference right, other circumstances being equal, over later applications. The Department of Industry, Commerce and Labor will grant said concessions and watch over the compliance of the obligations stipulated therein, in accordance with the following bases:

I. When the concessionaire of a petroleum claim is not the surface owner of the same, he must cede to the superficiary a minimum of 5% of the gross production by way of indemnity;

II. Within the exploitation zone, the concessionaire shall have the right to establish all installations which the extraction, conveyance and storage of petroleum may require;

III. Outside of the conceded zone the holder of an exploitation concession shall have the right to obtain concessions to lay pipe lines, build roads and make use of Federal waters upon compliance with the provisions of the relative laws;

IV. Exploitation concessions in "new zone" shall give the concessionaires, during such time as shall be determined by the Board of Representatives referred to in Sec. IV of the preceding article, the right to obtain a discount in the production tax, which shall be fixed by the same board, at the same time that it determines the limits of the explored zones;

V. Exploitation of a conceded zone may not be interrupted, except for a cause which in the judgment of the Department of Industry, Commerce and Labor, is a justifiable one;

VI. The Federal Executive shall regulate the exploitation of wells so as to prevent their premature exhaustion; and

VII. The life of a concession shall be not more than 30 years. At its termination, a concessionaire who has fulfilled all his obligations may obtain a new one covering the same zone.

The Department of Industry, Commerce and Labor shall establish the number of agencies sufficient for the reception and handling of the denouncements of petroleum claims in places where said agencies may be necessary.

Within the zone granted for exploitation, exploration concessions may be granted only to the holders of the former.

Art. 9. The Department of Industry, Commerce and Labor will grant concessions to establish oil pipe lines of public use and of private use. The former shall be used to transport the petroleum of whomsoever requests it and those of private use to transport the concessionaire's petroleum.

Concessions shall be subject to the following bases:

I. Concessions for oil pipe lines of public use shall be granted to whomever satisfies the requirements established in Art. 4.

II. Concessions for oil pipe lines of public use, in addition to giving the concessionaire the right of occupation and expropriation to which Sec. II of Art. 7 refers, shall be promoted by the Federal Government by the granting of such exemptions as the Constitution permits;

III. Concessions for oil pipe lines of private use shall be granted only to the holders of an exploration, exploitation or refining concession;

IV. Concessions for oil pipe lines of private use shall entitle the holder to obtain easements for passage and for water pipe lines;

V. Oil pipe lines must satisfy the conditions fixed by the exploitation regulations;

VI. The construction of oil pipe lines to load petroleum directly on vessels on the open sea will not be permitted;

VII. The operators of oil pipe lines, be these either public or private, shall be under the obligation of transporting the petroleum of the Federal Government to the extent of 20% of the capacity of the pipe line; and,

VIII. The Department of Industry, Commerce and Labor shall issue periodically tariffs for the transportation of petroleum by pipe lines after having granted a hearing to the interested parties.

Art. 10. The Department of Industry, Commerce and Labor shall grant concessions for the establishment of refineries and plants for the utilization of gas in accordance with the following bases:

I. They will be granted to those parties who fulfill the requirements set out in Art. 4;

II. The concessionaires shall be subject to the health, safety and police regulations for the preservation of the life and health of employees, workmen and residents of the vicinity; and

III. The Federation shall promote by all possible means, the petroleum refining industry and the utilization of gas.

Art. 11. Petroleum concessions on land the surface domain of which corresponds to the nation will be granted in the form prescribed by this law, and the concessionaire shall pay the corresponding indemnity for the use of the surface, in accordance with the regulations which may be issued to that end, in addition to the participation of the Federal Exchequer of such per cent of the gross products of exploitation as the respective concession specifies. It shall be established in the concession that the public services are not to be obstructed.

Art. 12. Concessions granted by the Executive of the nation, in accordance with previous laws, will be confirmed without any cost whatever subject to the provisions of this law.

Art. 13. The following rules shall be observed with respect to de-

nouncements made pursuant to the provisions of the decrees of July 31 and August 8 and 12, 1918:

I. When the title has not actually been issued and if in the respective denouncement proceedings no opposition was entered, the respective petroleum concessions shall be granted in conformity with the provisions of this law, and

II. If opposition did exist and the title has not actually been issued, the controversy having however been settled in accordance with the decrees of July 31 and August 8 and 12, 1918, the concession will be granted on the terms of this law to whomever may have been successful in the controversy.

Art. 14. The following rights will be confirmed without any cost whatever and by means of concessions granted in conformity with this law:

I. Those arising from lands in which works of petroleum exploitation were begun prior to May 1, 1917;

II. Those arising from contracts made before May 1, 1917, by the superficiary or his successors in title for express purposes of exploitation of petroleum.

The confirmation of these rights may not be granted for more than 50 years computed in the case of Sec. I from the time the exploitation works began, and in the case of Sec. II from the date upon which the contracts were made;

III. To owners of pipe lines and refiners who are at present operating by virtue of a concession or authorization issued by the Department of Industry, Commerce and Labor, and as to what has reference to said concessions or authorizations.

Art. 15. Confirmation of the rights to which Arts. 12 and 14 of this law refer, shall be applied for within the period of one year, computed from the date of the going into effect of this law; that date having passed, said rights shall be considered as renounced and the rights, confirmation of which has not been applied for, shall have no effect whatever against the Federal Government.

Art. 16. The Federal Executive shall designate reserve zones in free land (*terreno libre*).

Art. 17. Causes for the forfeiture of a concession are:

I. Lack of actual (*regulares*) works in the form prescribed by this law;

II. Violation of the provisions of Art. 5;

III. Failure to make the guaranty deposits as established by Secs. II and VI of Art. 7; and

IV. Failure to pay the taxes of the Federation.

Art. 18. Violations of this law and its regulations, which do not involve cause of forfeiture of the concession, will be punished by the Federal Executive with fines of from 100 to 5,000 pesos.

Art. 19. All acts of the petroleum industry are considered as being mercantile. As relates to anything not provided for by this law, they shall be governed by the Commercial Code and in a supplementary manner by the Civil Code of the Federal District.

Art. 20. The taxes payable by the petroleum industry in accordance with the respective law shall be paid by all corporations, companies or private individuals engaged in said industry, whatever be the character of the right they may have over the deposits which they are exploiting.

Consequently, for the purposes of this law all explorers and exploiters of petroleum and its derivatives will be upon an equal footing.

At the discretion of the Executive, the taxes payable by the petroleum industry may be delivered in kind or in cash in accordance with the fiscal evaluation quoted on the date upon which said delivery is made.

A participation is granted to the states, within the boundaries of which the petroleum claims in production are located; said participation shall not be less than 10% of the production tax as fixed annually by the General Congress in the revenue law, and in case of *baldios*[1] lands, the state shall have a further participation of 30% of those which correspond to the Federal Exchequer for the surface right.

Of the participation corresponding to the states under both aforesaid headings, the municipalities, in the jurisdiction of which the petroleum wells are located, shall receive at least the tenth part of what the states obtain.

The participation which corresponds to the states and to the municipalities shall be paid by the taxpayers directly to the State, in accordance with the monthly liquidation of the Department of Treasury.

Art. 21. The concessionaires as well as their successors in title shall submit to the measures taken by the Executive Power, in accordance with Art. 28 of the Federal Constitution, to avoid the exaggerated rise in the price at which the products are sold in the country.

Art. 22. The Federal Executive is empowered to issue all dispositions for the regulation of this law.

Transitory

Art. 1. The present law shall become operative from the time of its promulgation.

Art. 2. All previous provisions in conflict with this law are hereby repealed.

[1] Untilled or unallotted.

ART. 3. The regulations in force, provided they are not opposed to the present law, shall continue while the new regulations subject to the latter are being issued.

(Sgd.) Pedro C. RODRIGUEZ,
President of the Chamber of Deputies.
E. DEL VALLE,
President of the Senate.
A. CERISOLA,
Secretary of the Chamber of Deputies.
J. M. MORA,
Secretary of the Senate.

THEREFORE, I hereby order that it be printed, published, circulated and duly obeyed.

DONE in the Palace of the Executive of the Union, in Mexico, on the 26th day of the month of December, in the year one thousand nine hundred and twenty-five.

(Signed) Plutarco Elías CALLES.

(Signed) Luis N. MORONES,
Secretary of Industry, Commerce and Labor.

7. GENERAL CLAIMS CONVENTION BETWEEN THE UNITED STATES AND MEXICO[1]

Signed at Washington, September 8, 1923; ratification advised by the Senate, January 23, 1924; ratified by the President, February 4, 1924; ratified by Mexico, February 16, 1924; ratifications exchanged at Washington, March 1, 1924; proclaimed, March 3, 1924.

The United States of America and the United Mexican States, desiring to settle and adjust amicably claims by the citizens of each country against the other since the signing on July 4, 1868, of the claims convention entered into between the two countries (without including the claims for losses or damages growing out of the revolutionary disturbances in Mexico which form the basis of another and separate convention), have decided to enter into a convention with this object, and to this end have nominated as their plenipotentiaries:

The President of the United States of America:

The Honorables Charles Evans Hughes, Secretary of State of the United States of America, Charles Beecher Warren and John Barton Payne, and

The President of the United Mexican States:

[1] *Treaty Series*, No. 678.

Señor Don Manuel C. Téllez, Chargé d'Affaires ad interim of the United Mexican States at Washington;

Who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following articles:

ARTICLE I. All claims (except those arising from acts incident to the recent revolutions) against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties, and all claims against the United States of America by citizens of Mexico, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country by reason of losses or damages suffered by any corporation, company, association or partnership in which such citizens have or have had a substantial and bona fide interest, provided an allotment to the claimant by the corporation, company, association or partnership of his proportion of the loss or damage suffered is presented by the claimant to the commission hereinafter referred to; and all claims for losses or damages originating from acts of officials or others acting for either Government and resulting in injustice, and which claims may have been presented to either Government for its interposition with the other since the signing of the claims convention concluded between the two countries July 4, 1868, and which have remained unsettled, as well as any other such claims which may be filed by either Government within the time hereinafter specified, shall be submitted to a commission consisting of three members for decision in accordance with the principles of international law, justice and equity.

Such commission shall be constituted as follows: one member shall be appointed by the President of the United States; one by the President of the United Mexican States; and the third, who shall preside over the commission, shall be selected by mutual agreement between the two Governments. If the two Governments shall not agree within two months from the exchange of ratifications of this convention in naming such third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Art. XLIX of the convention for the pacific settlement of international disputes concluded at The Hague on October 18, 1907. In case of the death, absence or incapacity of any member of the commission, or in the event of a member omitting or ceasing to act as such, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ART. II. The commissioners so named shall meet at Washington for organization within six months after the exchange of the ratifications of this convention, and each member of the commission, before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide, according to the best of his judgment and in accordance with the principles of international law, justice and equity, all claims presented for decision, and such declaration shall be entered upon the record of the proceedings of the commission.

The commission may fix the time and place of its subsequent meetings, either in the United States or in Mexico, as may be convenient, subject always to the special instructions of the two Governments.

ART. III. In general, the commission shall adopt as the standard for its proceedings the rules of procedure established by the Mixed Claims Commission created under the claims convention between the two Governments signed July 4, 1868, in so far as such rules are not in conflict with any provision of this convention. The commission, however, shall have authority by the decision of the majority of its members to establish such other rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this convention.

Each Government may nominate and appoint agents and counsel who will be authorized to present to the commission, orally or in writing, all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either Government may offer to the commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation before the commission, in accordance with such rules of procedure as the commission shall adopt.

The decision of the majority of the members of the commission shall be the decision of the commission.

The language in which the proceedings shall be conducted and recorded shall be English or Spanish.

ART. IV. The commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each Government may appoint a secretary; these secretaries shall act as joint secretaries of the commission and shall be subject to its instructions. Each Government may also appoint and employ any necessary assistant secretaries and such other assistance as deemed necessary. The commission may also appoint and employ any persons necessary to assist in the performance of its duties.

ART. V. The high contracting parties, being desirous of effecting an

equitable settlement of the claims of their respective citizens thereby affording them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the commission by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

Art. VI. Every such claim for loss or damage accruing prior to the signing of this convention shall be filed with the commission within one year from the date of its first meeting, unless in any case reasons for the delay, satisfactory to the majority of the commissioners, shall be established, and in any such case the period for filing the claim may be extended not to exceed six additional months.

The commission shall be bound to hear, examine and decide, within three years from the date of its first meeting, all the claims filed, except as hereinafter provided in Art. VII.

Four months after the date of the first meeting of the commissioners, and every four months thereafter, the commission shall submit to each Government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claims decided. The commission shall be bound to decide any claim heard and examined within six months after the conclusion of the hearing of such claim and to record its decision.

Art. VII. The high contracting parties agree that any claim for loss or damage accruing after the signing of this convention, may be filed by either Government with the commission at any time during the period fixed in Art. VI for the duration of the commission; and it is agreed between the two Governments that should any such claim or claims be filed with the commission prior to the termination of said commission, and not be decided as specified in Art. VI, the two Governments will by agreement extend the time within which the commission may hear, examine and decide such claim or claims so filed for such a period as may be required for the commission to hear, examine and decide such claim or claims.

Art. VIII. The high contracting parties agree to consider the decision of the commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the commission as a full, perfect and final settlement of every such claim upon either Government, for loss or damage sustained prior to the exchange of the ratifications of the present convention (except as to claims arising from revolutionary disturbances and referred to in the preamble hereof). And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such commission shall from and after the con-

clusion of the proceedings of the commission be considered and treated as fully settled, barred and thenceforth inadmissible, provided the claim filed has been heard and decided.

ART. IX. The total amount awarded in all the cases decided in favor of the citizens of one country shall be deducted from the total amount awarded to the citizens of the other country and the balance shall be paid at Washington or at the City of Mexico, in gold coin or its equivalent to the Government of the country in favor of whose citizens the greater amount may have been awarded.

In any case the commission may decide that international law, justice and equity require that a property or right be restored to the claimant in addition to the amount awarded in any such case for all loss or damage sustained prior to the restitution. In any case where the commission so decides the restitution of the property or right shall be made by the Government affected after such decision has been made, as hereinbelow provided. The commission, however, shall at the same time determine the value of the property or right decreed to be restored and the Government affected may elect to pay the amount so fixed after the decision is made rather than to restore the property or right to the claimant.

In the event the Government affected should elect to pay the amount fixed as the value of the property or right decreed to be restored, it is agreed that notice thereof will be filed with the commission within 30 days after the decision aud that the amount fixed as the value of the property or right shall be paid immediately. Upon failure so to pay the amount of the property or right shall be restored immediately.

ART. X. Each Government shall pay its own commissioner and bear its own expenses. The expenses of the commission including the salary of the third commissioner shall be defrayed in equal proportions by the two Governments.

ART. XI. The present Convention shall be ratified by the high contracting parties in accordance with their respective Constitutions. Ratifications of this convention shall be exchanged in Washington as soon as practicable and the convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective plenipotentiaries have signed and affixed their seals to this convention.

Done in duplicate at Washington this eighth day of September, 1923.

Charles Evans HUGHES	(Seal)
Charles Beecher WARREN	(Seal)
John Barton PAYNE	(Seal)
Manuel C. TÉLLEZ	(Seal)

8. SPECIAL CLAIMS CONVENTION BETWEEN THE UNITED STATES AND MEXICO FOR THE SETTLEMENT OF CLAIMS OF AMERICAN CITIZENS ARISING FROM REVOLUTIONARY ACTS IN MEXICO FROM NOVEMBER 20, 1910, TO MAY 31, 1920[1]

Signed at Mexico City, September 10, 1923; ratification advised by the Senate, January 23, 1924; ratified by the President, February 4, 1924; ratified by Mexico, February 16, 1924; ratifications exchanged at Mexico City, February 19, 1924; proclaimed, February 23, 1924.

The United States of America and the United Mexican States, desiring to settle and adjust amicably claims arising from losses or damages suffered by American citizens through revolutionary acts within the period from November 20, 1910, to May 31, 1920, inclusive, have decided to enter into a convention for that purpose, and to this end have nominated as their plenipotentiaries:

The President of the United States: George F. Summerlin, chargé d'affaires ad interim of the United States of America in Mexico.

The President of the United Mexican States: Alberto J. Pani, Secretary of State for Foreign Affairs.

Who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following articles:

ARTICLE I. All claims against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties during the revolutions and disturbed conditions which existed in Mexico, covering the period from November 20, 1910, to May 31, 1920, inclusive, including losses or damages suffered by citizens of the United States by reason of losses or damages suffered by any corporation, company, association or partnership in which citizens of the United States have or have had a substantial and bona fide interest, provided an allotment to the American claimant by the corporation, company, association or partnership of his proportion of the loss or damage is presented by the claimant to the commission hereinafter referred to, and which claims have been presented to the United States for its interposition with Mexico, as well as any other such claims which may be presented within the time hereinafter specified, shall be submitted to a commission consisting of three members.

[1] *Treaty Series*, No. 676.

Such commission shall be constituted as follows: one member shall be appointed by the President of the United States; one by the President of the United Mexican States; and the third, who shall preside over the commission, shall be selected by mutual agreement between the two Governments. If the two Governments shall not agree within two months from the exchange of ratifications of this convention in naming such third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Art. 49 of the convention for the pacific settlement of international disputes concluded at The Hague on October 18, 1907. In case of the death, absence or incapacity of any member of the commission, or in the event of a member omitting or ceasing to act as such, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

Art. II. The commissioners so named shall meet at Mexico City within six months after the exchange of the ratifications of this convention, and each member of the commission, before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide, according to the best of his judgment and in accordance with the principles of justice and equity, all claims presented for decision, and such declaration shall be entered upon the record of the proceedings of the commission.

The Mexican Government desires that the claims shall be so decided because Mexico wishes that her responsibility shall not be fixed according to the generally accepted rules and principles of international law, but *ex gratia* feels morally bound to make full indemnification and agrees, therefore, that it will be sufficient that it be established that the alleged loss or damage in any case was sustained and was due to any of the causes enumerated in Art. III hereof.

The commission may fix the time and place of its subsequent meetings, as may be convenient, subject always to the special instructions of the two Governments.

Art. III. The claims which the commission shall examine and decide are those which arose during the revolutions and disturbed conditions which existed in Mexico covering the period from November 20, 1910, to May 31, 1920, inclusive, and were due to any act by the following forces:

(1) By forces of a Government *de jure* or *de facto*.

(2) By revolutionary forces as a result of the triumph of whose cause governments *de facto* or *de jure* have been established, or by revolutionary forces opposed to them.

(3) By forces arising from the disjunction of the forces mentioned in the next preceding paragraph up to the time when the government *de jure* established itself as a result of a particular revolution.

(4) By federal forces that were disbanded, and

(5) By mutinies or mobs, or insurrectionary forces other than those referred to under subdivisions (2), (3) and (4) above, or by bandits, provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs or bandits, or treated them with lenity or were in fault in other particulars.

Art. IV. In general, the commission shall adopt as the standard for its proceedings the rules of procedure established by the Mixed Claims Commission created under the claims convention between the two Governments signed July 4, 1868, in so far as such rules are not in conflict with any provision of this convention. The commission, however, shall have authority by the decision of the majority of its members to establish such other rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this convention.

Each Government may nominate and appoint agents and counsel who will be authorized to present to the commission, orally or in writing all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either Government may offer to the commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation before the commission, in accordance with such rules of procedure as the commission shall adopt.

The decision of the majority of the members of the commission shall be the decision of the commission.

The language in which the proceedings shall be conducted and recorded shall be Spanish or English.

Art. V. The commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each Government may appoint a secretary; these secretaries shall act as joint secretaries of the commission and shall be subject to its instructions. Each Government may also appoint and employ any necessary assistant secretaries and such other assistance as deemed necessary. The commission may also appoint and employ any persons necessary to assist in the performance of its duties.

Art. VI. Since the Mexican Government desires to arrive at an equitable settlement of the claims of the citizens of the United States and to grant them a just and adequate compensation for their losses or damages, the Mexican Government agrees that the commission shall not disallow or reject any claim by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

Art. VII. Every claim shall be filed with the commission within two years from the date of its first meeting, unless in any case reasons for the

delay, satisfactory to the majority of the commissioners, shall be established, and in any such case the period for filing the claim may be extended not to exceed six additional months.

The commission shall be bound to hear, examine and decide, within five years from the date of its first meeting, all the claims filed.

Four months after the date of the first meeting of the commissioners, and every four months thereafter, the commission shall submit to each Government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claims decided. The commission shall be bound to decide any claim heard and examined within six months after the conclusion of the hearing of such claim and to record its decision.

Art. VIII. The high contracting parties agree to consider the decision of the commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the commission as a full, perfect and final settlement of every such claim upon the Mexican Government, arising from any of the causes set forth in Art. III of this convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such commission shall from and after the conclusion of the proceedings of the commission be considered and treated as fully settled, barred and thenceforth inadmissible, provided the claim filed has been heard and decided.

Art. IX. The total amount awarded to claimants shall be paid in gold coin or its equivalent by the Mexican Government to the Government of the United States at Washington.

Art. X. Each Government shall pay its own commissioner and bear its own expenses. The expenses of the commission including the salary of the third commissioner shall be defrayed in equal proportions by the two Governments.

Art. XI. The present convention shall be ratified by the high contracting parties in accordance with their respective Constitutions. Ratifications of this convention shall be exchanged in Mexico City as soon as practicable and the convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective plenipotentiaries have signed and affixed their seals to this convention.

Done in duplicate at Mexico City this tenth day of September, 1923.

George F. Summerlin. (Seal.)
A. J. Pani (Seal.)

9. DEVELOPMENT OF RELIGIOUS POLICY[1]

The Mexican constitutional provisions of 1917 apply equally to all religious sects. In practice, however, they bear primarily upon the adherents of the Roman Catholic Church, because the Mexicans are overwhelmingly of that faith.[2] They are not directed against communicants of the church, but against the church as an organization. It is not to be doubted that much persecution of individual men and women of the Roman Catholic Church took place during the constitutionalist revolution. The religious in some instances suffered as a class. The uncommon spectacle of the adherents of a religion ill-treating the leaders of that religion was one of the phenomena of the Mexican revolution. The explanation is to be found in history.

Europe's first contact with Mexico came through Spain, which, at the time, was the stanchest and least liberal supporter of the Roman Catholic Church. In the course of time, many unfortunate features were added to the privileges of the clergy in Mexico. With the beginning of the revolution against Spain in 1810, led by the patriot priest Miguel Hidalgo, who on September 10, 1810, declared the independence of Mexico, the church began taking a new hold upon the people. The establishment of independence brought the church into politics within a comparatively short time. Between 1823 and 1857, the rights of the Roman Catholic Church were much to the front in Mexican political affairs.

The church party sought to insure to itself a privileged position by writing a guaranty into the Constitution. The Plan of Iguala, proclaimed on February 24, 1821, made religion, independence and union the three cornerstones of Mexico, to be symbolized in the national flag. The Constitution of October 24, 1824, provided:

> Art. 3. The religion of the Mexican nation is, and will perpetually be, the Roman Catholic Apostolic. The nation will protect it by wise and just law, and prohibit the exercise of any other whatever.
>
> Art. 154. The military and ecclesiastics shall continue to be subject to the authorities which they obey in virtue of laws now in force.

The organized church steadily gained in economic power, and the Government was largely under the control of clerical influences during the third and fourth decades of the 19th century.

[1] This historical note on Mexico's attitude toward religious organization is printed in connection with Professor Hackett's study of social reforms because the subject has attracted some attention since his paper was planned. — D. P. M.

[2] Only about 100,000 Mexicans profess other religions.

By the Constitution of August 26, 1842, privileges of both the ecclesiastics and the military were confirmed, the Constitution providing:

ART. 2. The nation professes the Roman Catholic apostolic religion, and will not tolerate the public exercise of any other.

ART. 31. There shall be no other legal privileges than those conceded to the ecclesiastics and the military; but when they accept any duty or employment of a civil character, their causes and persons shall be subject to the authority designated by law.

Opponents of these interests were, however, active and there seems to be some truth in the assertion that the wars with Texas and the United States staved off civil war on the clerical issue. On November 21, 1855, the Ley Juarez was promulgated by the advanced liberals then in power. It was directed against the privileges of the church and was intended to suppress special courts and remove all civil cases from military and ecclesiastical courts. It brought immediate opposition from the church, and the War of the Reform followed, producing in its course the legislative basis for a new relation between church and state.

The Ley Lerdo, passed on June 25, 1856, was intended to remove from ecclesiastical control the right to own lands beyond the needs of church corporations. On June 5, the Society of Jesus had been suppressed by governmental decree. The liberal reformers next revised the Constitution on February 5, 1857,[1] which was supplemented by a law of July 12, 1859, which deprived the church of temporal powers, property rights, and which provided for the abolition of all religious orders. The principal additions to civil control over ecclesiastical affairs effected by this law were:

ART. 1. All the property that the secular and regular clergy has been managing under various titles, whether in the shape of landed property or in whatever name or form it may have been held, comes under the dominion of the nation.

ART. 5. The existent religious orders, regardless of the denomination to which they may belong and of the purpose for which they may have been created, as well as archconfraternities, confraternities and brotherhoods united to the religious communities and the cathedrals or parishes or whatever other churches, are suppressed throughout the republic.

The attitude of the Government respecting the church was reiterated in a law of September 25, 1873, amending the 1857 constitution, and the legislation of the previous 20 years was codified in a law of reform of

[1] The religious question was touched in Arts. 27 and 123, Rodríguez, José Ignacio, *American Constitutions*, I, p. 45, 68.

December 14, 1874. Among the additions to the system already noted, these laws separated church and state, abolished the religious oath and declared marriage to be a civil contract. A regulatory law was added on December 18, 1902.

The passage of these laws did not solve the problem as seen by the governmental authorities. The clergy was the best educated class in Mexico, their parishes possessed a continuous existence and it was practically impossible for the state to distinguish between gifts to the church for current expenses and gifts that would render the parish wealthy, notwithstanding that this circumstance was well within the purview of the lawmakers. When the *científico* régime developed under Díaz, it was natural that the clergy and the Catholic leaders assumed a more important part in public affairs. There was, however, no Catholic party, in the sense of a party based on religious profession of faith, taking part in political affairs. When Díaz retired, he was succeeded by Francisco de la Barra, whose political group a little later took the name of "the Catholic party." Luis Cabrera, a member of that party, stated that with De la Barra's accession to the presidency "the Catholic clergy of Mexico believed the moment had arrived to organize themselves for the political struggle, and to that end a political group was formed, under the patronage of the Catholic clergy, made up chiefly of big landowners."

It was under these conditions that the constitutionalist group began their effort in 1913 to support the Madero policies. Their first formal declaration of political reforms, dated December 12, 1913, made no mention of church reforms. The declaration of June 11, 1915, which was issued at Vera Cruz in one of the darkest periods of the constitutionalist cause stated the policy of the Carranza régime. This statement, which was probably intended both to gain support and to quiet the fears of Roman Catholics in the face of various crimes committed against them, said:

> 3rd. The constitutional laws of Mexico known under the name of Laws of Reform, which establish the separation of the church and the state and which guarantee the individual the right of worship in accordance with his own conscience and without offending public order, shall be strictly observed; therefore, no one shall suffer in his life, freedom and property because of his religious beliefs. Temples shall continue to be the property of the nation according to laws in force, and the Constitutionalist Government shall again cede for the purposes of worship those which may be necessary.

The attitude of the constitutionalists seemed to be that the laws of reform of July 12, 1859, and of December 14, 1874, together with the

constitutional provisions, were a complete system for the equitable control of the church, if they were executed. It is scarcely to be doubted that under the Díaz régime execution of these laws was lax. The Carranza Government up to the time of the adoption of the new constitution made only one change in these laws, creating anew the government machinery by which they might be made effective. This law, issued on August 22, 1916, read:[1]

I. So long as churches are open to the service of any creed, they remain assimilated to properties destined to a public service, and subject to the oversight of the Department of Government, so far as concerns the exercise of the creed, and to the Department of Hacienda respecting matters relating to their use, preservation and improvement.

II. The First Chieftancy, through the Department of Government, is the sole authority which can order the closing of churches in order to retire them from religious service and to consolidate their property. Consequently the local and municipal authorities must refrain from making decisions on this matter.

III. Right of use of the said properties being consolidated with direct control by the nation, the possession, preservation and administration of the same shall be in charge of the Department of Hacienda.

IV. The person in charge of the Executive Power must designate the churches devoted to a public service in accordance with a previous favorable opinion from the Department of Hacienda, and of what the public service to which they are designated consists.

V. When a church is legally withdrawn from the creed, the Department of Hacienda and Government shall order a survey of the church and shall proceed to inventory what it contains, transmitting to the head of the church under whose jurisdiction the church was closed the ornaments, vestments and other movable goods devoted to religious services, with the exception of those acquired earlier than the law of nationalization of July 12, 1859; objects of artistic or historic interest must be placed at the disposition of the Secretary of the Department of Public Instruction and Fine Arts to be turned over to museums, lyceums, libraries and other education establishments.

Besides the provisions of Art. 27[2] relating to religious property, the Constitution promulgated on February 5, 1917, contains the following:

Art. 3. Instruction is free; that given in public institutions of learning shall be nonsectarian. Primary instruction, whether higher or lower, given in private institutions shall likewise be nonsectarian.

No religious corporation nor minister of any religious creed shall be permitted to establish or direct schools of primary instruction.

[1] Translated from the *Diario Oficial*, IV, p. 311.

[2] See Pars. II and III, p. 408-09.

Private primary schools may be established only subject to official supervision.

Primary instruction in public institutions shall be free.[1]

ART. 5, par. 3. The state shall not permit any contract, covenant or agreement to be carried out having for its object the abridgment, loss or irrevocable sacrifice of the liberty of man, whether by reason of labor, education or religious vows. The law, therefore, does not recognize the establishment of monastic orders, of whatever denomination, or for whatever purpose contemplated.[2]

ART. 24. Every man is free to embrace the religion of his choice and to practice such ceremony, devotions or observances of the respective creed, either in places of public worship or at home, provided they do not constitute an offense punishable by law.

Every religious act of public worship shall be performed strictly within the places of public worship, which shall be at all times under governmental supervision.

ART. 130. The federal authorities shall have exclusive power to exercise in matters of religious worship and outward ecclesiastical forms, such intervention as by law authorized. All other officials shall act as auxiliaries to the federal authorities.

The Congress shall not enact any law establishing or forbidding any religion whatsoever.[3]

Marriage is a civil contract. Marriage and all other acts relating to the civil status of individuals shall appertain to the exclusive jurisdiction of the civil authorities in the manner and form by law provided, and they shall have the force and validity given them by said laws.[4]

A simple promise to tell the truth and to comply with obligations contracted shall subject the promisor, in the event of a breach, to the penalties established therefor by law.[5]

The law recognizes no corporate existence in the religious associations known as churches.

The ministers of religious creeds shall be considered as persons exercising a profession and shall be directly subject to the laws enacted on the subject.

The state legislatures shall have the exclusive power of determining the maximum number of ministers of religious creeds according to the needs of each locality. Only a Mexican by birth may be a minister of any religious creed in Mexico.

No ministers of religious creeds shall, either in public or private meetings, or in acts of worship or religious propaganda, criticise the funda-

[1] Decree forbidding private school chapels, February 22, 1926, *United States Daily*, April 3, p. 491.

[2] Reenacts art. 5 of the law of September 25, 1873.

[3] Art. 1 of law of September 25, 1873.

[4] Art. 2 of 1873.

[5] Art. 4 of 1873.

mental laws of the country, the authorities in particular or the Government in general; they shall have no vote, nor be eligible to office, nor shall they be entitled to assemble for political purposes.

Before dedicating new temples of worship for public use, permission shall be obtained from the Department of the Interior (Gobernacion); the opinion of the Governor of the respective State shall be previously heard on the subject. Every place of worship shall have a person charged with its care and maintenance, who shall be legally responsible for the faithful performance of the laws on religious observances within the said place of worship, and for all the objects used for purposes of worship.

The caretaker of each place of public worship, together with ten citizens of the place, shall promptly advise the municipal authorities as to the person charged with the care of the said place of worship. The outgoing minister shall in every instance give notice of any change, for which purpose he shall be accompanied by the incoming minister and ten other citizens of the place. The municipal authorities under penalty of dismissal and fine, not exceeding 1,000 pesos for each breach, shall be responsible for the exact performance of this provision; they shall keep a register of the places of worship and another of the caretakers thereof, subject to the same penalty as above provided. The municipal authorities shall likewise give notice to the Department of the Interior through the intermediary of the State Governor, of any permission to open to the public use a new place of worship, as well as of any change in the caretakers. Gifts of personalty may be received in the interior of places of public worship.

Under no conditions shall studies carried on in institutions devoted to the professional training of ministers of religious creeds be ratified or be granted any other dispensation of privilege which shall have for its purpose the ratification of the said studies in official institutions. Any authority violating this provision shall be punished criminally and all such dispensation of privilege be null and void, and shall invalidate wholly and entirely the professional degree toward the obtaining of which the infraction of this provision may in any way have contributed.

No periodical publication which either by reason of its program, its title or merely by its general tendencies, is of a religious character, shall comment upon any political affairs of the nation, nor publish any information regarding the acts of the authorities of the country or of private individuals insofar as the latter have to do with public affairs.

Every kind of political association whose name shall bear any word or any indication relating to any religious belief is hereby strictly forbidden. No assemblies of any political character shall be held within places of public worship.

No minister of any religious creed may inherit either on his own behalf or by means of a trustee or otherwise, any real property occupied by any association of religious propaganda or religious or charitable purposes. Ministers of religious creeds are incapable legally of inheriting by will from

ministers of the same religious sect or from any private individual to whom they are not related by blood within the fourth degree.

All real and personal property pertaining to the clergy or to religious institutions shall be governed, insofar as their acquisition by private parties is concerned, in conformity with Art. 27 of this Constitution.

No trial by jury shall ever be granted for the infraction of any of the preceding provisions.

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CONTENTS

PAGE

I. Pacific Settlement and Public Affairs 451
Significance of policy and of practice 452
Extent of engagements 455
II. Prewar Development 457
Germanic Confederation 457
Normal Latin American policy 458
Protocol 23 of Paris Congress 459
Admission of a non-Christian state 460
Contributions to international law 461
Alabama claims 463
International American Conference 463
First Hague Conference 464
Cases decided by the Permanent Court of Arbitration . . 468
Matters referred to commissions of inquiry 470
Second Hague Conference 471
Proposed Court of Arbitral Justice 473
International Prize Court 474
Prewar arbitrations 475
III. Record of United States 477
1. The Jay Treaty of 1794 479
The arbitrations under the treaty 481
2. Treaty of Guadalupe Hidalgo, 1848 485
Treaty terms not applied 486
3. Congressional attitude, 1838–1853 487
Foote resolution 488
Report on Underwood resolution 489
4. The *Alabama* claims, 1872 492
5. Congressional resolutions, 1874 494
6. Swiss proposal, 1883 496
7. Anglo-American project, 1897 497
Tribunal for international arbitration 498
Effect of petitions 499
General arbitration treaty 500
The Senate debate 504
Under McKinley Administration 506
Frank hostility in minority report 507
Extensive amendments 508
Text of treaty rejected 509
8. Roosevelt's failure, 1905 513
Invitation to Governments 513
President Roosevelt's attitude 515
Causes of opposition 516
The extremist minority report 517
President Roosevelt's letter 519

PAGE

III. Record of United States — *Concluded*
9. The 1908–09 series of treaties 521
10. President Taft's effort, 1911–12 524
Justiciable questions 526
President led public debate 529
Objections in committee report 530
Root and colleagues oppose majority 531
Senate debates changes 532
11. Treaties for Advancement of Peace, 1913–14 . . . 534
Senate action 537
Permanent Commission 540
Treaties not in force 545
12. Central American Court of Justice, 1916 546
Central American Peace Conference 547
Decisions of the Court 548
Court expires by limitation 549
Conference on Central American affairs . . . 550
13. Congressional declaration of policy, 1916 552
IV. Postwar Development 555
"Enforce" peace 555
League system of pacific settlement 556
Choice of method 557
Domestic jurisdiction 558
Mediation overlies system 563
Court provides judicial settlement 565
Judgments 568
Advisory Opinions 568
American adhesion conditional 570
Treaties of conciliation 572
"Arbitration, Security, Reduction of Armaments" . . . 574
Practice of pacific settlement 577
Summary of postwar progress 580

APPENDIX
Index of Bipartite Arbitration Treaties 587
Chronological Summary 601
Summary by Countries 602

ARBITRATION AND THE UNITED STATES

I. PACIFIC SETTLEMENT AND PUBLIC AFFAIRS

Arbitration is used as a general term at the present time to include a complete system for pacific settlement of international disputes. This is the sense in which it is used in the formula that has recently become an international slogan, "arbitration, security and reduction of armaments." It is used here in this broad sense.

Forms of pacific settlement are several in number:

(1) International court procedure, which may be described as the settlement of disputes between states by judges on the basis of law;

(2) Arbitration, described in Art. 37 of Hague convention for pacific settlement of international disputes of October 18, 1907, as "the settlement of disputes between states by judges of their own choice and on the basis of respect for law";[1]

(3) Conciliation by inquiry to "facilitate the solution of disputes by elucidating the facts by means of an impartial and conscientious investigation" (Art. 9 of the 1907 convention);

(4) Mediation, a procedure of "reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the states at variance" (Art. 4), having "the character of advice and never [of] binding force" (Art. 6);

(5) Good offices may be described as the tender of an offer to reconcile opposing claims. Good offices are "friendly and unofficial proceedings" and "do not partake of the nature of intervention."[2] (The phrase good offices is "somewhat elastic.") "In one sense," said John Hay, "it means the unofficial advocacy of interests which the agent may properly represent, but which it may not be convenient to present and discuss on a full diplomatic footing." In another sense "it is allied to arbitral intermediation as an impartial adviser of both parties and not only

[1] "Friendly composition" is less formal than arbitration and more definite than inquiry.

[2] John Bassett Moore, *Digest of International Law*. VI, p. 239.

implies, but requires the assent of both parties, and oftener a spontaneous invitation from each."[1]

It can be seen from the rough definitions of these several forms of pacific settlement that each of them is designed to solve a special type of dispute. The characteristic common to them all is consideration of the dispute by some third disinterested party. In the case of the first two, the opinion of the third party is accepted as a settlement. In the other forms, it is suggestive.

Judicial and arbitral procedure are likely to be employed by states when the dispute is of a complicated nature and when a settlement is deemed by the disputants to be more profitable to them than insisting upon having their own way. This state of mind may result from a disinclination to push the state's attitude to the point of war, from the dispute not being worth a war, from an actual desire not to go to war, from a real interest in having justice done, or from other considerations.

The other forms serve a useful purpose in enabling states to withdraw from positions taken. Differences arising over a series of occurrences or facts may readily spring from varying premises or from variant bodies of information. National interpretations are likely to increase the differences between the points of view. With more or less formality according to the method chosen, an impartial element is able to elucidate the facts, to coordinate them and thus to facilitate the disputants reaching harmonious conclusions.

Of the five methods of pacific settlement indicated, the first three are dependent for their operation upon qualified individuals; whereas, mediation and good offices are methods practiced by states. Judicial, arbitral or inquiry procedure are established by states either in anticipation of disputes arising or as a means of settling current disputes. Mediation and good offices are exercised by states only in the presence of a dispute and may have the effect of bringing about resort to the other methods.

Significance of Policy and of Practice

It will not be the purpose in the following pages to examine the technical aspects of pacific settlement, but certain general statements may be made.

[1] Mr. Hay to Mr. McNally, March 16, 1900, Moore, *Digest of International Law*, VII, p. 3.

Pacific settlement exists both as a matter of policy and as a matter of practice. As a policy it manifests itself in general conventions under which the parties agree to use the method as occasion arises. In the field of practice the actual use of it occurs. The policy aspect is the more significant and possibly the more important; for states which have taken an agreement to arbitrate either all questions or defined categories of questions will inevitably so conduct their affairs as not to push their particular point of view so far that their case would be adversely affected if the subject matter should in the end come to impartial review. With such treaties in existence between states negotiation itself tends to take on a character of reconcilement, which has been frequently lacking in negotiations not so circumscribed.

Tension in day-to-day diplomacy is less likely to be found between states whose arbitral engagements *inter se* are extensive. It is also a rather striking fact that such states do not have frequent occasion to arbitrate specific disputes. For example, "Denmark is unanimous in its opinion about its foreign policy. If we have a conflict with any other state which we can not solve by diplomatic negotiations, we shall submit it to arbitration."[1]

States which both say that and put it into practice in their policy will inevitably be found on the quiet and peaceful side of international affairs.

In studying policy in pacific settlement one encounters a maze of formulas. These are both technical and argumentative. It may, however, be said that anything short of the simplest and most direct statement in some degree begs the question, sidesteps the issue or represents an attempt to "eat one's cake and have it too." The full-fledged formula has been variously expressed, but never better than by Afghanistan and Persia in their treaty of friendship of June 22, 1921, by Art. X of which:[2]

The two contracting parties have decided, in conformity with international usage, to submit to arbitration all the difficulties arising between

[1] Ministerial statement resulting in a vote of confidence by the Folkething quoted in *American Journal of International Law*, VI, p. 715.

[2] League of Nations, *Treaty Series*, XXXIII, p. 299. States which have taken such a thoroughgoing engagement are Afghanistan, Argentine Republic, Austria, Belgium, Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Guatemala, Honduras, Hungary, Italy, Mexico, Nicaragua, Netherlands, Norway, Paraguay, Persia, Peru, Portugal, Salvador, Siam, Spain, Sweden, Switzerland and Uruguay.

the two countries of which a solution can not be arrived at by diplomatic negotiations.

Further, the high contracting parties undertake loyally to carry out the decisions of the arbitrators.

The current fashion is based on a formula notably, but unsuccessfully, applied in 1911 by President Taft. This consists of defining questions on which a legal decision will be sought and stipulating that all others shall be left to inquiry and report as an aid to settlement or to diplomatic reconciliation of views. This formula has been extensively applied in postwar policy, being expressed in Art. 12 of the Covenant of the League of Nations.

The full-fledged formula, however, was not generally employed before the war, except by small states between themselves. The result was a multiplicity of formulas of a limiting character. On the other hand, the tendency toward definiteness of engagement was sought by attempting to define the particular types of dispute which should be arbitrated. This specific practice is by no means dead. It takes two forms. A general treaty may define categories of disputes which shall be arbitrated; or a provision in a convention on a given subject may provide that disputes arising on the subject matter of the treaty shall be examined. Such provisions in a treaty not essentially devoted to pacific settlement are called compromisory clauses. The best prewar conspectus of the status of arbitration exhibited 78 subjects for which arbitration was specifically provided by convention.[1]

If diplomacy fails to settle a dispute between states, the question arises whether that "international claim is of such nature and importance as not to be arbitrable, and as to demand assertion, if need be, by force of arms."[2]

The specific dispute, if there is a general arbitration engagement, is likely to take a routine course through foreign offices. It may be submitted to arbitration because its solution depends upon determination of a legal point, because of the complication of the facts involved or to clean up routine business, as is usually the case in claims conventions. Other matters in dispute may in

[1] Christian L. Lange, Union interparlementaire. *L'Arbitrage obligatoire en 1913.* Relevé des stipulations conventionnelles en vigueur en 1913 instituant le recours obligatoire à l'arbitrage international (Bruxelles, Misch & Thron, 1914), "Tableau des matières," p. 307.

[2] Mr. Olney to Sir Julian Pauncefote, April 11, 1896, *Foreign Relations*, 1896, p. 224.

the circumstances of the moment be regarded by either or both parties as having "political" elements. No one quite knows what this means, but once it is asserted, it has never failed to cast doubt on the arbitrable character of the dispute. However, when populations have not become too excited, even such questions have been remitted to arbitration. Whatever the character of the dispute, it has usually been regarded as necessary to leave the definition of the question at issue to the parties. This is done in a document usually known as the *compromis*, but also called in English the special agreement. Throughout the world the special agreement is generally regarded as an administrative document and is concluded directly by foreign offices and diplomats. In the United States the Senate has insisted that the special agreement be regarded as a treaty to which its advice and consent is requisite.

In the pages which follow only casual reference will be made to specific arbitrations and in discussing the status of the subject, special agreements are not included in statistics.

Extent of Engagements

The extent of engagements to arbitrate is a complicated thing to estimate. The best list is Lange's *L'Arbitrage obligatoire en 1913*. He lists 127 arbitration treaties of general character and 146 treaties containing a compromisory clause, all having been certified as in force by the Governments concerned. He does not include the Hague conventions of 1899 or 1907, since they embodied no engagement. Myers in his *Arbitration Engagements* lists 204 bipartite treaties and 4 national constitutions. He excludes compromisory clauses confined to the subject matter of the treaty in which they are contained, of which type Lange includes 107 bipartite treaties and 4 international conventions, or a total of 111. It thus appears that these lists agree on 162 general engagements in force. Myers lists 39 treaties not in force in 1915, of which 17 have certainly come into force. About as many of that period have expired. It would then seem that about 180 arbitration treaties of the prewar period carry over.

In the first 1,100 treaties printed in the League of Nations *Treaty Series*, dating from July 5, 1920, there were 17 renewals of prewar arbitration treaties and 9 additional general arbitration

treaties, 12 conciliation commission treaties and 14 combinations of arbitration and conciliation, or a total of 52. Forty treaties of the latter type, including the four Locarno texts, exist additionally.

In the first 1,000 treaties published in the *Treaty Series* occurred 187 compromisory clauses.

Indirect application of arbitration is extensive. Of the first 1,000 treaties in the *Treaty Series* a group of some 20 exchanges of notes deals with the repatriation of insane persons. Obviously so simple a matter would scarcely involve arbitration, which, however, the states concerned provide for in other engagements between them. Postal conventions do not ordinarily contain arbitral provisions; but all international postal arrangements are covered by the compromisory clause in the main convention constituting the Universal Postal Union.

In many instances arbitration is indirectly extended in fact by new treaties, as, for instance, the treaty of December 21, 1923, between Nepal and the United Kingdom which confirms the treaty of Segowlie of 1815.[1] Art. 6 of the latter contains a provision for compulsory arbitration between Nepal and Sikkim.[2]

It is probably not too much to say that at the present time 50% of the treaty engagements made between states are subject to arbitral jurisdiction of a bipartite character between the states concerned. This does not include the engagements resulting from Art. 12 of the League of Nations, to which 55 states are parties and which, as a consequence, is the equivalent of 1,485 bipartite treaties.

[1] *Treaty Series*, XXXV, p. 358.

[2] The text, which has an interest of its own, follows: "Art. 6th. The Rajah of Nipal engages never to molest or disturb the Rajah of Sikkim in the possession of his territories; but agrees, if any differences shall arise between the State of Nipal and the Rajah of Sikkim, or the subjects of either, that such differences shall be referred to the arbitration of the British Government, by whose award the Rajah of Nipal engages to abide." (Aitchison, *A Collection of Treaties, Engagements and Sanads relating to India*, 3d. ed., II, p. 167.)

II. PREWAR DEVELOPMENT

The principles of pacific settlement have been practiced from the earliest historical times, Greek epigraphy revealing records from the eighth century B. C. The practice of calling upon third and disinterested parties to settle disputes was a natural corollary of any system of courts, but until modern times the methods were not clearly distinguished. During the Middle Ages it was customary for rulers in making treaties to leave the settlement of disputes arising under them to the Pope, as was natural in a political system in which the Holy See was conceived as standing aloof from and above the rulers. There are many instances of pacific settlement scattered throughout the records of history, and it may be safely said that the practice of arbitration previous to the 19th century was far more extensive than generally supposed.[1]

Germanic Confederation

The revival of resort to arbitration for the settlement of international disputes in the Jay treaty of 1794 was a precedent which the European states could not well follow during the course of the Napoleonic wars. In the treaty of Vienna of June 8, 1815, arbitration was applied to the reorganization of Germany which was given the name of the Germanic Confederation. All parties were interested in the modernizing of the German states and the idea of providing a jurisdiction for the settlement of their disputes was virtually spontaneous. The treaty of Vienna contains the following provision:

Art. 63. The states of the confederation undertake to defend not only the whole of Germany, but also each individual state of the union, in case it should be attacked, and mutually guarantee all of their possessions which are comprised in that union. When war is declared by

[1] John Bassett Moore is engaged in compiling the history of arbitration and his researches amply confirm the statement. "A Sketch of the History of International Arbitration" by Henry S. Fraser, *Cornell Law Quarterly*, XI, p. 179. The works of Marcus N. Tod, A. Raeder, Victor Bérard and W. L. Westermann (*Classical Journal*, II, p. 197) cover Greek arbitration. Ettore di Ruggiero, *L'Arbitrato pubblico in relazione col privato presso i Romani*, is the most elaborate work on Roman arbitration. Novacovich, Merignhac, Nys and Revon have paid attention to medieval arbitration.

the confederation, no member may enter upon private negotiation with the enemy, nor make peace nor an armistice without the consent of the others. The members of the confederation, while reserving the right to form alliances, nevertheless bind themselves not to contract any engagement which would be directed against the safety of the confederation or of the individual states which compose it. The confederated states, moreover, undertake not to make war among themselves under any pretext and not to pursue their differences by force of arms, but to submit them to the Diet. It will try the path of mediation through the medium of a commission; if this does not succeed and a juridical award should become necessary, it will be provided by an Austregal judgment (*Austregal-Instanz*), well organized, to which the litigant parties shall submit themselves without appeal.

The constitution of the Germanic Confederation was annexed to the treaty and contained many provisions of doubtful wisdom, which eventually in 1866 resulted in the dissolution of the confederation. The commission provided in Art. 63 was set up in 1834 and served its purpose satisfactorily.

Normal Latin American Policy

While the Germanic Confederation was getting its bearings as an entity, the Spanish possessions in the American hemisphere were declaring their independence. What eventually became the Latin American states had been provinces in the Spanish possessions. Their boundaries had been fixed by Spanish laws and their provincial disputes had naturally resulted in orderly court procedure. They were accustomed to a single legal system. It was consequently natural that they should make extensive provision for the settlement of their disputes by arbitration.

Aside from the American-Mexican article of 1848, the Latin American states appear to be the only ones to have made arbitral treaties up to the year 1868. In a large measure the Latin American states took arbitral engagements without any limitations whatever. Of 33 treaties in force in 1913 which provided for unlimited arbitration, 23 were Latin American. Of 13 additional treaties, which excluded only the constitutional provisions of the state from arbitration, all were Latin American, Spain being the other party in seven. Of the four constitutions in the world which provide for arbitration before appeal to arms three are Latin American: the Brazilian constitution of February 4, 1891, the

Dominican constitution of June 13, 1924, and the Venezuelan constitution of April 27, 1904. The Portuguese constitution of August 21, 1911, is the fourth.[1]

Protocol 23 of Paris Congress

The peace movement in England began immediately after the Congress of Vienna and only a month or so after the founding

[1] The text of the provisions follows:

Brazil — "Art. 34. The national Congress shall have exclusive power:

"11. To authorize the Government to declare war, when arbitration has failed or can not take place, and to make peace" (Constitution of 1891). (José Ignacio Rodriguez, *American Constitutions*, I, p. 142.) Also in new constitution.

Dominican Republic — "Art. 100. The powers instituted by this Constitution shall not declare war without first proposing arbitration.

"In order to confirm this principle, there must be incorporated in all international treaties celebrated by the Republic this clause: 'All differences which may arise between the contracting parties must be submitted to arbitration before appealing to war'" (Constitution of June 13, 1924). (Pan American Union, Law and Treaty Series, No. 1.)

Portugal — "Art. 26. It belongs exclusively to the Congress of the Republic:

"14. To authorize the Executive Power to make war, if it can not have recourse to arbitration, or if this recourse miscarries, except in the case of imminent or actual aggression by foreign forces, and to make peace.

"Art. 73. The Portuguese Republic, without prejudice to what may be agreed upon in its treaties of alliance, recognizes the principle of arbitration as the best method of settling international disputes" (Constitution of August 21, 1911). (105 *British and Foreign State Papers*, p. 772, 779.)

Venezuela — "Art. 120. In all international treaties a clause shall be inserted to the effect that, 'all differences between the contracting parties shall be decided by arbitration without appeal to war'" (Constitution of April 27, 1904). (*For. Rel.*, 1904, 873.)

It is interesting to note the following provision of the Czechoslovak Constitution of February 29, 1920:

"Art. 33. The decision [of Parliament] as to a declaration of war . . . shall require a three-fifths majority of all the members of each chamber" (Howard L. McBain and Lindsay Rogers, *The New Constitutions of Europe*, p. 317) (New York, 1922).

Iceland may be included in the same list as a result of the following provision of the Danish law providing for the union of Denmark and Iceland, Amalienborg, November 30, 1918:

"17. In the event of differences of opinion concerning the regulations in this law of union, which can not be settled by negotiations between the Governments, the matter will be referred to an arbitration committee of four members, half of whom are appointed by the Supreme Court of Justice of each country. This arbitration committee will decide differences by the majority of the votes.

"In the event of there being no such majority the decision is to be left to an arbitrator, whom the Swedish and Norwegian Governments are requested to nominate in turn" (*British and Foreign State Papers*, 111, p. 706).

This is in effect an international provision, since Iceland's foreign relations are conducted through Denmark.

of the first society in America. By the 40's and early 50's an important English group was not only engaged in educating the public but was also seeking to interest the British and European Governments in arbitration. This group was particularly active in trying to forestall the crisis which resulted in the Crimean War. When that war ended in 1856 a deputation of 18 or 20 members of Parliament waited upon the prime minister, Lord Palmerston, with a memorial from the Peace Congress Committee, urging upon the Government "the importance of proposing at the conferences then sitting, some system of international arbitration which may bring the great interests of nations within the cognizance of certain fixed rules of justice and right."

The prime minister urbanely told the deputation that while "he could not go with them to the full extent," they "must yet have great influence on the general opinion of mankind and greatly dispose men to prefer the solid advantages of peace to the more dazzling results of war." Then he raised objections to the proposal and avoided any ground for hope that his influence would be thrown in favor of it.

The next move was to send a deputation to the peace conference at Paris, consisting of Henry Richard, Joseph Sturge, a business man of large interests, and Charles Hindley, a member of Parliament. Their memorial was fairly well received. Lord Clarendon, head of the British delegation, met them "with so much of genial sympathy for their object and frank cordiality of manner," that they were encouraged to request him to bring the matter before the congress. While calling their attention to the difficulty of accepting a binding engagement to submit future differences to arbitration as the memorial recommended, he added, "Still, gentlemen, I will do what I can to bring the matter before the congress." When the minutes of the congress were published in the course of the next few months, it was evident that Lord Clarendon had redeemed his promise.[1]

Admission of a Nonchristian State

The Congress of Paris had negotiated and signed the treaty of peace with Turkey on March 30, 1856. Art. VII of that treaty changed the basis of modern international relations by admitting the first nonchristian state to "the advantages of the public law

[1] Henry Richard, *Memoirs of Joseph Sturge*, London, 1864, p. 496–499.

of Europe." In thus admitting that a nonchristian state had rights of its own, it became necessary to define its position. And Art. VIII of the treaty provided for a general mediatory procedure. These articles read as follows:[1]

Art. VII. Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, his Majesty the Emperor of Austria, his Majesty the Emperor of the French, his Majesty the King of Prussia, his Majesty the Emperor of all the Russias, his Majesty the King of Sardinia, declare the Sublime Porte admitted to participate in the advantages of the public law of Europe and the European concert. Their Majesties undertake, each for himself, to respect the independence and territorial integrity of the Ottoman Empire; guarantee in common the strict observance of this engagement; and will consequently regard every act of a character to violate it as a question of general interest.

Art. VIII. If there arose between the Sublime Porte and one or more of the other signatory powers a disagreement which should threaten the maintenance of their relations, the Sublime Porte and each of these powers, before having recourse to the employment of force, will place the other contracting parties in position to prevent that extremity by their mediatory action.

Contributions to International Law

It was from this record that the congress had already made that Count Clarendon at the 23rd session of the congress on April 14, 1856, started in his effort to carry out the promise that he had made to his countrymen. The congress was then engaged in making the contributions to international law on which its reputation is based. The text of the Declaration of Paris, which abolished privateering, had just been voted in its final form, when the English delegate

having asked permission to present to the congress a proposal, which seemed to him must be favorably received, said that the calamities of war are still too much in the minds of all for there not to be a need to seek any means of a character to prevent its return. The congress has inserted in Art. VIII of the treaty of peace a provision which recommends recourse to the mediatory action of a friendly state before appealing to force in case of a disagreement between the Porte and one or more of the signatory powers.

[1] Translated from *British and Foreign State Papers*, 46, p. 12. The original text of Art. VIII first appears in the minutes of the 10th session, March 18, 1856, in a draft presented from the editing committee by its rapporteur, Baron Bourqueney; on March 26 in the 15th session it is given in its final form (*loc. cit.*, p. 91, 105).

The first plenipotentiary of Great Britain thinks that this happy innovation ought to be given a more general application and thus become a barrier against conflicts which frequently break out only because mutual explanation and understanding is not always possible. He, therefore, proposes to reach an agreement on a resolution adapted to assure, in the future, this hazard of time for the maintenance of peace, without, however, affecting the independence of governments.

Count Alexander Collonna de Walewski was authorized to support the idea on behalf of France, which was "entirely disposed in favor of a wish which, responding fully to the tendency of our time, should in no wise interfere with the liberty of action of governments." Count Charles Ferdinand de Buol-Schauenstein of Austria did not hesitate to associate himself with these opinions, but could not take an absolute engagement. Baron Otto Theodore Manteuffel for Prussia stated that his king "shares completely" these ideas, and that he felt himself authorized to give them all the development they imply.

Count Alexis Orlov of Russia felt it necessary to refer the matter to his emperor. However, the explanations of the ensuing discussion resulted in the following minute:[1]

The plenipotentiaries do not hesitate to express, in the name of their Governments, the wish that states between which any serious misunderstandings may arise, should, before appealing to arms, have recourse, so far as circumstances might allow, to the good offices of a friendly power.

The plenipotentiaries hope that the Governments not represented at the congress will unite in the sentiment which has inspired the wish recorded in the present protocol.

In the remainder of the 19th century this resolution was by no means without effect. Upon it a considerable polity of mediation was based. Its ultimate effect reached the statute books through Russia, the convener of the First Hague Conference. When that conference was called by the Tsar, Feodor Martens, the jurisconsult of the Russian foreign office, was given the task of preparing projects for its consideration. The project which he prepared in its main lines became the 1899 convention for the pacific settlement of international disputes. His chapter on good offices and mediation was based upon the Paris resolution.[2]

[1] *British and Foreign State Papers*, 46, p. 135–136.

[2] *Conférence de la paix, 4e partie*, Annexe 1 C and D.

Alabama Claims

There was no popular movement in favor of pacific settlement in continental Europe until the *Alabama* claims arbitration in 1872. All governments were seriously impressed by the spectacle of the submission of the important questions involved in the *Alabama* claims to the Geneva tribunal and the prompt acceptance of the award by Great Britain.

General orders No. 100 of the United States War Department of April 24, 1863, embodying instructions for the government of the armies of the United States in the field was the first codification of the rules of warfare. The instructions were drafted by Francis Lieber, a distinguished American political scientist, who was born in Germany.

The instructions and the *Alabama* claims called the attention of political scientists to possible development. Francis Lieber wrote to one of his correspondents in September, 1871, that "one of my favorite ideas has long been a congress composed of the principal international jurists, unofficially but definitely public and international, a sort of œcumenical juridic council." His idea was realized by the holding at Ghent in 1873 of the first meeting of the Institute of International Law. The Institute consisted of distinguished political scientists, including many jurisconsults of the governments. Its projects in the next 50 years had a wide effect upon defining international law. The preoccupation of the institute on the subject of arbitration was shown by the elaboration as early as August 28, 1875, of rules of arbitral procedure. The existence of these rules, carefully and practically constructed, drew attention to the possibility of making general agreements for the arbitration of disputes, and five years later states began to make permanent treaties of arbitration.[1]

International American Conference

The International American Conference which convened at Washington in 1889 established a committee on general welfare consisting of delegates of the United States, the Argentine Republic, Bolivia, Colombia, Brazil, Guatemala and Venezuela.

[1] Earlier general provisions were general compromisory clauses without procedural details.

Into this committee the Argentine and Brazilian members introduced a proposal for a complete system of arbitration together with a provision that "in case of war a victory of arms shall not convey any rights to the territory of the conquered."[1]

The plan was thoroughly discussed,[2] and as eventually passed, was a very thoroughgoing plan of arbitration, including a recommendation to European powers and an elaborated declaration that "the principle of conquest was not during the continuation of the treaty of arbitration to be recognized as admissible under American public law."

The treaty was not signed. In the United States the texts were presented in the form of a report to the Senate and House by the President, who evidently expected action upon it, for in his message of September 3, 1890, he said: "The ratification of the treaties contemplated by these reports will constitute one of the happiest and most hopeful incidents in the history of the Western hemisphere."[3]

In the next few years it was Latin American states almost exclusively which made general arbitration treaties, Brazil going so far as to put the arbitral clause into its constitution in 1891.

First Hague Conference

The First Hague Conference was destined to give arbitration a new importance in the world. Indirectly, it emphasized the connection between arbitration and armament, for it was as a matter of fact the problem of the increase of armament which led to the calling of the conference by the Tsar of Russia. Austria-Hungary intended to rearm its artillery, and Russian financial inability to match the necessary expense led the Russian Government to consider the possibility of securing a proportionate decrease of armament in a conference.[4]

When the states invited came to determine the subject matter to be discussed the program included seven points respecting armament and the conduct of war and an eighth, which read: "Acceptance, in principle, of the employment of good offices,

[1] *Minutes of the International American Conference*, p. 108.

[2] *International American Conference*, II, p. 954–1083.

[3] 51st Cong., 1st sess., Sen. Ex. Doc. No. 224; *Cong. Docs.*, Vol. 2689.

[4] See the full account in this Series, Vol. IV, No. 4, p. 330–336.

mediation and voluntary arbitration, in cases where they are available, with the purpose of preventing armed conflicts between nations; an understanding in relation to their mode of application and establishment of a uniform practice in employing them." This item was remitted to the third commission of the conference.

At the outset of the conference there were laid before it documents prepared by Feodor Martens, one of which covered good offices, mediation and international commissions of inquiry, and another was a project of an arbitral code, both accompanied by learned and persuasive explanatory notes. At the same session Sir Julian Pauncefote, the British delegate, expressed the opinion that the Russian projects did not go far enough. "If we desire to take a step in advance," he said, "I am of the opinion that it is absolutely necessary to organize a permanent international tribunal, which may be convened on a moment's notice at the request of the contesting nations."

The Italian delegate, supported by the Belgian, asked that the British proposal be not insisted on, because it "seems destined to encounter difficulties." Though the British delegate did not have a written project, he was, as a matter of fact, acting under instructions.

The situation was different with the American delegates, whose instructions, dated April 18, 1899, included as an annex a plan for an international tribunal,[1] and the American delegates were instructed "to use their influence in the conference in the most effective manner possible to procure the adoption of its substance or of resolutions directed to the same purpose." Though this project was not formally placed before the conference, it undoubtedly had a profound effect upon the final character of the convention. The American delegation was the only one with "anything like a full and carefully adjusted plan for a court of arbitration."[2]

The Russian delegation had first given out that it had no definite plans for a tribunal, but soon after the conference convened on May 18 that delegation announced that it had a plan. It was after the presentation of the Russian documents on May 26 that Sir Julian Pauncefote made his statement, which in the

[1] Instructions to the American Delegates to the Hague Conferences, 1899 and 1907 (World Peace Foundation, April, 1913).

[2] *Autobiography of Andrew D. White*, II, p. 255.

opinion of the French delegation "put the question of the permanent tribunal of arbitration in such a way that discussion of it could not be evaded, and this decided the Russian Government to put it also."

In the Committee of Examination held the same day a definite proposal was introduced by Sir Julian Pauncefote and simultaneously a Russian amendment to its original project was submitted. These two documents became the basis of the provisions for the Permanent Court of Arbitration included in the convention for pacific settlement of international disputes of July 29, 1899.

Though no American project was discussed before the conference, there is no reason to doubt that the existence of a scheme in the American instructions, the previous consultation between Secretary of State Hay and Sir Julian Pauncefote, who was minister at Washington, and the joint influence of the British and American delegations with their colleagues in the conference, were the real reasons why the matter was brought to actual discussion and eventual agreement. Frederick W. Holls, the American member of the Committee of Examination, was particularly active and influential in favoring the plan.

As is well known, the Permanent Court of Arbitration is not an actual court.[1] It consists of a panel made up of four suitable appointees of each state party to the convention. This list is annually published by the secretary-general. Formation of a court is entirely optional with the parties. If they have a dispute and decide to make use of the court, they select from this list the persons whom they desire to constitute the tribunal, which follows the procedure of the convention unless it is modified by the special agreement.

On April 14, 1926, the members of the Permanent Court of Arbitration numbered 149, and the successors of four deceased members had not been appointed. Appointments were made by 44 states as follows:

Argentine Republic, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, France, Germany, Great Britain, Greece, Guatemala, Haiti, Hungary, Italy, Japan, Luxemburg, Mexico, Netherlands,

[1] The full text of the convention is available in many places. The most accessible text, 1907 revision, is in this Series, VII, No. 8, p. 459.

Nicaragua, Norway, Panama, Persia, Peru, Poland, Portugal, Rumania, Salvador, Serb-Croat-Slovene State, Siam, Spain, Sweden, Switzerland, Turkey, United States, Uruguay and Venezuela.[1]

It is interesting to note that, though 44 states are acting under the convention for the appointment of members of the court, and the 1907 convention has been signed by 46 states, it has been ratified by only 26. On the other hand 45 states pay quotas for the upkeep of the court.

The awards in arbitrations by tribunals under the convention are officially published by the bureau of the court. The following table shows the record of its work up to April 14, 1926:[2]

[1] States which do not appear are Abyssinia, Albania, Austria, Costa Rica, Esthonia, Honduras, Latvia, Liberia, Lithuania, Paraguay, and the Soviet Union, the predecessor of which ratified both the 1899 and 1907 conventions.

[2] The awards are printed by the Bureau of the Court. They are collected in George Grafton Wilson, *The Hague Arbitration Cases*, Boston, Ginn and Company, 1915; and James Brown Scott, *The Hague Court Reports*, New York, Oxford University Press, 1916, with continuations in Carnegie Endowment for International Peace, Division of International Law, Pamphlet Series. All awards have been printed in the *American Journal of International Law*.

CASES DECIDED BY THE PERMANENT COURT OF ARBITRATION

(Under Arts. 20–57 (1899) and 41–85 (1907) of the convention for the pacific settlement of international disputes.)

	Parties.	Case.	Date of Compromis.	Date of Decision.	Arbitrators.
1	United States of America–United Mexican States.	Pious funds of the Californias.	May 22 1902	Oct. 14 1902	MATZEN,[1] Sir Edward Fry, Martens, Asser, de Savornin Lohman.
2	Germany, Great Britain and Italy–Venezuela (Belgium, Spain, United States, France, Mexico, Netherlands, and Sweden and Norway).	Right of preference claimed by blockading powers.	May 7 1903	Feb. 22 1904	MURAVEV, Lammasch, Martens.
3	Germany, France and Great Britain–Japan.	Perpetual leases in Japan.	Aug. 28 1902	May 22 1905	GRAM, Renault, Motono.
4	France–Great Britain.	Dhows of Maskat.	Oct. 13 1904	Aug. 8 1905	LAMMASCH, Melville W. Fuller, de Savornin Lohman.
5	Germany–France.	Casablanca deserters.	Nov. 10 1908	May 22 1909	DE HAMMARSKJÖLD, Sir Edward Fry, Fusinato, Kriege, Renault.
6	Norway–Sweden[2]	Maritime frontier.	Mar. 14 1908	Oct. 23 1909	LOEFF, Beichmann, Hammarskjöld.[3]
7	United States of America–Great Britain.	North Atlantic fisheries.	Jan. 27 1909	Sept. 7 1910	LAMMASCH, de Savornin Lohman, George Gray, Sir Charles Fitzpatrick, Drago.
8	United States of America–Venezuela.	Claims of the "Orinoco" Company.	Feb. 13 1909	Oct. 25 1910	LAMMASCH, Beernaert, de Quesada.
9	France–Great Britain.	Arrest and restitution of Savarkar.	Oct. 25 1910	Feb. 24 1911	BEERNAERT, Renault, Lord Desart, Gram, de Savornin Lohman.

10	Italy–Peru.	Canevaro claim.	April 25 1910	May 3 1912	RENAULT, Fusinato, Calderón.
11	Russia–Turkey.[2]	Arrears of interest claimed for Russian indemnitaries for damages sustained during the war of 1877.	Aug. 4 1910	Nov. 11 1912	LARDY, Baron de Taube, Mandelstam,[3] Heraute Abro Bey,[3] Ahmed Rechid Bey.[3]
12	France–Italy.	Seizure of the *Manouba*.	Mar. 6 1912	May 6 1913	HAMMARSKJÖLD, Fusinato, Kriege, Renault, Baron de Taube.
13	France–Italy.	Seizure of the *Carthage*.	Mar. 6 1912	May 6 1913	Same as 12.
14	France–Italy.	Seizure of the *Tarignano* and cannon shots fired at the Tunisian mahones *Kamouna* and *Gaulois*.	Nov. 8 1912	Litigants agreed to settle the affairs directly.	Same as 12.
15	Netherlands–Portugal.	Dutch–Portuguese frontiers in the island of Timor.	April 3 1913	June 25 1914	LARDY (sole arbitrator).
16[4]	Spain, France and Great Britain–Portugal.	Seizure of religious goods in Portugal.	July 31 1913	Sept. 2 and 4, 1920	ROOT, de Savornin Lohman, Lardy.
17	France–Peru[2]	French claims against Peru.	Feb. 2 1914	Oct. 11 1921	OSTERTAG,[3] Sarrut,[3] Elguera.[3]
18	United States–Norway.	Norwegian claims against United States.	June 30 1921	Oct. 13 1922	VALLOTON,[3] Anderson,[3] Vogt.[3]
19	United States–Netherlands.	Sovereignty of Island of Palmas (or Miangas).	Jan. 23 1925	– –	HUBER.

[1] President's name in capitals.
[2] Special arbitral tribunal.
[3] Not member of the court.
[4] Constituted under the summary procedure provided by Chapter IV.

MATTERS REFERRED TO COMMISSIONS OF INQUIRY

(Under Arts. 9–14 (1899) and 9–36 (1907) of the convention for the pacific settlement of international disputes.)

Parties.	Subject.	[1] Date of Convention.	Report delivered.	Members of Commission.	Settlement.
1 Great Britain and Russia.	North Sea incident, Oct. 21–22, 1904.	Nov. (12) 25, 1904	Feb. 26 1905	Admirals Spaun, Dubassov, Beaumont, Fournier, Davis.	Russia responsible; paid £60,000 for damages done.
2 France and Italy.	*a.* Seizure of the *Tavignano*, Jan. 25, 1912. *b.* Cannon-shots fired at the Tunisian mahones *Kamouna* and *Gaulois*, Jan. 25, 1912.	April 25 1912 April 25 1912	July 23 1912 July 23 1912	Capt. James Segrave, Capt. Sombron, Capt. Zerbi, Lieut. Violette, Count Gravina.	Referred to Hague Court on questions of law and award of damages (14, above).
3 Germany and Netherlands.	Loss of Dutch S. S. *Tubantia.*	Mar. 30 1921	Feb. 27 1922	Messrs. A. Hoffmann, H. G. Surie, H. O. Ravn, Unger, Gayer.	Conclusion — Sunk by German torpedo.

[1] The convention of reference. The North Sea incident convention was officially called a declaration.

The Permanent Court of Arbitration was declared constituted as a result of ratifications of the 1899 convention by a communication dated April 9, 1901, of the minister of foreign affairs of the Netherlands acting in his capacity as president of the Administrative Council of the Court. In 25 years 22 matters have been considered under the convention.

The very complete and satisfactory rules of procedure contained in the convention encouraged governments to pay more attention to general engagements of pacific settlement. At the time the court came into being there existed only about 40 bipartite treaty provisions for general arbitration. Between 1901 and 1907 more than 60 went into force.

Second Hague Conference

The Second Hague Conference was called by the Tsar of Russia, though the movement for it was initiated by President Roosevelt. The first item on its agenda was improvements in the 1899 convention with respect to the court of arbitration and the international commission of inquiry.

Omitting mention of the courts for the moment, a great deal of attention was given to expansion of the field of obligatory arbitration. Of these proposals, only one was realized. The convention respecting the employment of force for the recovery of contract debts was due to the initiative of the American delegation and in its final form provided:[1]

> Art. I. The contracting powers agree not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals.
>
> This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, prevents any "compromis" from being agreed on, or, after the arbitration, fails to submit to the award.

Two other main lines of development were unsuccessful. One series of proposals followed the negative line of the Anglo-French treaty of October 14, 1903, and sought to provide in a general

[1] *Treaties, Conventions . . . between the United States and other Powers*, 1776–1909, II, p. 2254.

convention for the arbitration of all disputes unless they should affect the independence, territorial integrity, vital interests or national honor of the parties.

Another series of proposals approached the matter from the positive side and sought to list the subjects on which arbitration might always take place. The net result was a declaration in the final act to the following effect:[1]

It is unanimous —

1. In admitting the principle of compulsory arbitration.

2. In declaring that certain disputes, in particular those relating to the interpretation and application of the provisions of international agreements, may be submitted to compulsory arbitration without any restriction.

Finally, it is unanimous in proclaiming that, although it has not yet been found feasible to conclude a convention in this sense, nevertheless the divergences of opinion which have come to light have not exceeded the bounds of judicial controversy, and that, by working together here during the past four months, the collected powers not only have learnt to understand one another and to draw closer together, but have succeeded in the course of this long collaboration in evolving a very lofty conception of the common welfare of humanity.

The principal work of the conference was upon the American proposal for the creation of a voluntary but genuine court of arbitral disputes. In the instructions issued by Secretary of State Root to the American delegates on May 31, 1907, he defined the aims to be as follows:

The method in which arbitration can be made more effective, so that nations may be more ready to have recourse to it voluntarily and to enter into treaties by which they bind themselves to submit to it, is indicated by observation of the weakness of the system now apparent. There can be no doubt that the principal objection to arbitration rests not upon the unwillingness of nations to submit their controversies to impartial arbitration, but upon an apprehension that the arbitrations to which they submit may not be impartial. It has been a very general practice for arbitrators to act, not as judges deciding questions of fact and law upon the record before them under a sense of judicial responsibility, but as negotiators effecting settlements of the questions brought before them in accordance with the traditions and usages and subject to all the considerations and influences which affect diplomatic agents. . . .

[1] *Treaties, Conventions . . . 1776–1909*, II, p. 2378.

It should be your effort to bring about in the Second Conference a development of The Hague Tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility.

Proposed Court of Arbitral Justice

The American delegation at the conference pursued this object with the utmost diligence throughout the conference.

A Russian proposal for the reform of the Permanent Court of Arbitration was introduced. It provided only for the annual meeting of the members of that court and the election of three of their number who "during the following year must always be ready to constitute immediately the International Tribunal of Arbitration." The American proposal provided for a court consisting of 15 judges constituting a court which should meet annually and remain in session as long as necessary. This project became the basis of conference work and without any particular difficulties was brought to completion with the exception of agreement upon a scheme for electing the judges.

That problem proved to be insurmountable. A group of states led by the Brazilian delegate, Barbosa, opposed every scheme suggested for effecting such a choice which gave them either a lesser voting opportunity or a lesser representation of judges in the court than would be accorded to every other state. It was obviously impossible for 45 states to create a court of 15 judges which should meet both conditions. In the course of extensive proceedings the German and British delegates materially added to the document under discussion, particularly with respect to the attempt to allocate judges among the states in an equitable way. Every possible project to allocate the judges met with opposition. All told 13 different proposals for allocating judges were made, involving the principles of rotation, direct appointment, indirect appointment, direct election or indirect election.[1] In the end the conference was unable to adopt any.

[1] Proceedings of the Fourth National Conference of the American Society for the Judicial Settlement of International Disputes, p. 168. See the whole article, "Composition of the Court" by Denys P. Myers, for discussion of the plans proposed.

In view of this *impasse* it was regarded as something of a victory for the proposal that the text as voted was attached to the final act, and the conference called the attention of the signatories to the advisability of bringing it into force as soon as an agreement could be reached respecting the selection of the judges and the constitution of the court.

International Prize Court

Another court was projected at the Second Hague Conference, the International Prize Court. As this would function only as a result of naval warfare, and is automatically confined to the limited number of states possessing navies or shipping, the problem of organizing a court of 15 judges proved to be solvable.

Of the 15 judges, those appointed by Germany, the United States, Austria-Hungary, France, Great Britain, Italy, Japan and Russia were always to be summoned. The other seven were to be determined by a system of rotation over a period of six years according to a table providing for both judges and deputy judges. This device, which failed to meet approval in the case of a Court of Arbitral Justice, was acceptable in the case of a prize court the decisions of which would not in any case affect more than half of the 46 states from which judges were to be drawn.

The prize court, however, struck another snag. Great Britain called attention shortly after signing the convention to the fact that there was no general agreement as to important points of prize law and proposed a conference to arrive at such an agreement. The representatives of Austria-Hungary, France, Germany, Great Britain, Italy, Japan, the Netherlands, Russia and the United States met at London and on February 26, 1909, signed the Declaration of London.[1] That document was not in force at the outbreak of the war, and the development of maritime warfare in the course of that conflict precluded its coming into force.

Under the circumstances, the constitution of the International Prize Court depended upon the declaration being in force. Shortly after the signing of the declaration the United States raised a question affecting its own constitutional law. The decisions of

[1] The text is printed in many treatises on international law.

the Supreme Court are final in the Government of the United States. The Department of State felt that no decision of an international court should directly review them. For this reason a protocol was signed on September 19, 1910, at The Hague providing that recourse to the international court of prize might be exercised "in the form of an action in damages for the injury caused by the capture," rather than as an appeal from a national jurisdiction. Twelve states signed this protocol, and three expressed their intention to adhere.[1]

The circular note of the United States proposing this action also proposed "an international agreement by virtue of which the judges of the International Prize Court should be competent to sit as judges of the Court of Arbitral Justice for such nations as may freely consent thereto."[2]

No objections seem to have been made to this procedure, but as the International Prize Court never actually came into existence the opportunity to proceed with it was never offered.

Prewar Arbitrations

The practice of arbitration has contributed somewhat to international law. The publication by the United States Government in 1898 of John Bassett Moore's *History and Digest of International Arbitrations to which the United States Has Been a Party*, was followed in 1902 by Henri la Fontaine's *Pasicrisie internationale. Histoire documentaire des arbitrages internationaux*, which aimed to cover the world. In 1902 the Permanent Court of Arbitration began the publication of awards, which still further emphasized the value of reports of international jurisprudence. In 1905 Messrs. Lapradelle and Politis began the publication of the *Recueil des arbitrages internationaux*. Following the First Hague Conference W. Evans Darby published a collection of the various schemes for *International Tribunals*. To the fourth edition of this volume he added a tabulation of "Instances of International Settlements Involving the Application of the Principle of International Arbitration," which is the most complete list of the cases of the 19th century, Lapradelle and Politis

[1] *Foreign Relations*, 1910, p. 597; protocol at p. 631 and signatures at p. 635.

[2] *Ibid.*, p. 603–604.

not yet being completed. Darby's index shows arbitrations held by states from 1794 to 1904 as follows:

Great Britian	166	Haiti	8
Germany (German States)	113	Netherlands	15
France	105	Honduras	6
United States	96	Japan	3
Turkey	56	Liberia	2
Austria-Hungary	48	Mexico	16
Italy (Italian States)	45	Montenegro	6
Russia	42	Morocco	3
		Muscat	1
Afghanistan	10	Natal	1
Argentina	15	Nicaragua	10
Belgium	7	Norway and Sweden	6
Bolivia	10	Paraguay	4
Brazil	19	Persia	13
Bulgaria	10	Peru	26
Chile	30	Portugal	26
China	8	Rumania	3
Colombia	18	Salvador	4
Costa Rica	6	Serbia	8
Denmark	9	Siam	5
Dominican Republic	4	Spain	22
Ecuador	11	Switzerland	6
Egypt	7	Transvaal	11
Ethiopia	4	Uruguay	2
Greece	14	Venezuela	27
Guatemala	9	Zanzibar	1

III. RECORD OF UNITED STATES

The record of the United States in respect to arbitration will be set forth in detail in this chapter. It may here be summarized as follows:

1. The United States both through its public officials and its citizenry has throughout its history expressed itself more in quantity and quality in favor of arbitration than any other country.
2. It was a party to the treaty of 1794 which reintroduced arbitration into modern statecraft. Of the three arbitrations held under it, the United States balked at the results of two, while Great Britain prevented one from proceeding smoothly.
3. A general engagement to arbitrate was made with Mexico in 1848.
4. In the period up to the Civil War the House of Representatives declined three times and the Senate declined twice to act on resolutions in favor of arbitration.
5. The United States insisted on arbitrating the *Alabama* claims, originally in face of British opposition. The Senate rejected one treaty to accomplish that purpose, but eventually a better treaty was concluded under which the United States won the award.
6. In 1874, following these successes, both the Senate and House of Representatives passed resolutions expressive of sentiment, but without the force of law, in favor of arbitration.
7. In 1883 the Department of State did not pursue to a conclusion a Swiss proposal to negotiate an unlimited arbitration treaty.
8. In 1897 the Senate rejected a limited arbitration treaty concluded with Great Britain, after it had itself extensively amended the text.
9. In 1899 the United States at the first Hague conference submitted a plan which, in conjunction with British and Russian proposals, finally took form in the Permanent Court of Arbitration.
10. In 1905 the Senate advised and consented to the text of a

general treaty then regarded as a standard form, amended against the judgment of the President.

11. In 1907 the United States was the chief proponent at the second Hague conference of the proposal to establish a genuine court of arbitral justice.
12. In 1907 it was cosponsor of the forum of the Central American Court of Justice, the most complete international court which has existed.
13. In 1908–09 it put through the 1905 form of treaty, embodying conditions on which the Senate had then insisted.
14. In 1911 the President sought to establish a new standard of pacific settlement by negotiating with France and Great Britain model treaties providing a jurisdiction for all types of disputes. The Senate so amended these treaties that President Taft regarded them as useless for the purpose and did not proceed with their ratification.
15. In 1913–14, practically on the sole initiative of Secretary of State Bryan, the United States initiated 31 treaties providing for inquiry and report before resort to war. Of these treaties 21 are in force; but in most instances the permanent commissions provided for in them are incomplete.
16. In 1914 it made a treaty with Nicaragua which placed upon Nicaragua engagements which were subsequently held by the Central American Court of Justice to be inconsistent with Nicaraguan obligations toward Costa Rica and Salvador. Failure by the United States to take cognizance of the situation thus created resulted in the abandonment of that court by the Central American states.
17. Congress in 1916 declared the pacific settlement of international disputes to be the policy of the United States, and that competitive naval armament should be modified when a competent international tribunal existed.
18. The United States, though potent in developing the machinery of pacific settlement included in the Covenant of the League of Nations, did not ratify that document in 1919 or 1920.
19. In 1922 the United States became a party to a treaty negotiated under its auspices by and with the Central American states, which restricted the formula of the 1913–14 treaties for the advancement of peace by excluding from its operation the exceptions of the 1908–09 arbitration treaties.

20. In 1926 the Senate laid down conditions under which the President might sign the protocol covering the Statute of the Permanent Court of International Justice.

Referring to part of this record, Secretary of State Hughes in a letter to the President on March 1, 1923, advised him that it was inexpedient to attempt negotiations for engagements of wide scope unless there was evidence that the Senate entertained a different point of view from that previously held by it. Senator Lodge had inquired of the President on behalf of the Committee on Foreign Relations whether he favored accepting the optional clause establishing a compulsory jurisdiction for the Permanent Court of International Justice. President Harding sent the letter to Secretary Hughes, who wrote to the President:[1]

I understand that the question is not intended to elicit your purely personal opinion, . . . but whether you, as President, in the exercise of your constitutional authority to negotiate treaties, favor the undertaking to negotiate a treaty on the part of the United States with other powers, creating such an obligatory jurisdiction.

So understood, I think that the question must be answered in the negative. This is for the reason that the Senate has so clearly defined its attitude in opposition to such an agreement, that until there is ground for believing that this attitude has been changed, it would be entirely futile for the Executive to negotiate a treaty of the sort described.

I may briefly refer to earlier efforts in this direction. . . .

In the light of this record it would seem to be entirely clear that until the Senate changes its attitude, it would be a waste of effort for the President to attempt to negotiate treaties with the other powers providing for an obligatory jurisdiction of the scope stated in the committee's first inquiry quoted above.

If the Senate, or even the Committee on Foreign Relations, would indicate that a different point of view is now entertained, you might properly consider the advisability of negotiating such agreements.

1. THE JAY TREATY OF 1794

The treaty of amity, commerce and navigation between the United States and Great Britain, concluded at London, November 19, 1794, and commonly known as the Jay treaty, is regarded as marking the beginning of modern arbitration.

[1] 67th Cong., 4th sess., Sen. Doc. No. 342; *Cong. Docs.*, Vol. 8171.

John Jay was admirably adapted by experience for the negotiation of the treaty. He was one of the negotiators of the treaty of peace with Great Britain, had been secretary of foreign affairs under the Confederation and was the first Chief Justice of the Supreme Court of the United States, which position he held at the time of his appointment as minister to London.

The origin of the arbitration provisions in the treaty may have been due to Jay's legal training. The arbitration of the eastern boundary was suggested by him as early as April 21, 1785, when he was secretary of foreign affairs under the Confederation,[1] and was advised by the Senate in February, 1790.[2] There exists an undated [1794] project of proposals by Lord Grenville, the British negotiator, in which commissioners were proposed for settling the questions of debts and neutral rights.[3] On August 6, 1794, Mr. Jay inclosed to Lord Grenville a project of treaty, in which arbitration was provided for the St. Croix River, the American debtors, and the neutral rights questions.[4] On August 30 Lord Grenville replied with counter drafts, in which the arbitration procedure for all three questions was accepted and elaborated.[5] From that time the negotiations dealt with the details rather than the principle of arbitration.

The treaty, signed on November 19, 1794, was presented to the Senate on June 8, 1795, and was advised and consented to by it on June 24.[6] The delay in Senate action was due to a controversy of which one of the most cordial admirers of the treaty writes:[7]

> Criticised at the time as a surrender to Great Britain, its commercial provisions denounced as wholly inadequate, carried without a vote to spare in the Senate, and in the matter of appropriation by the narrow majority of three in the House of Representatives, due to the timely and masterly intervention of Fisher Ames, this treaty, which ruined the political career of Jay and deprived him of the presidency to which he

[1] Sen. Doc. No. 231, 56th Cong., 2d sess., V, 579; *Cong. Docs.*, Vol. 4051.

[2] *Journal of the Executive Proceedings of the Senate*, I, p. 41–42.

[3] Samuel Flagg Bemis, *Jay's Treaty*, p. 280 and 282.

[4] American State Papers, *Foreign Relations*, I, p. 486.

[5] *Ibid.*, p. 488.

[6] Executive Journal of the Senate, I, p. 178–182.
See on Senate action on the treaty, Ralston Hayden, *The Senate and Treaties, 1789–1817*, chap. IV.

[7] James Brown Scott, *The Hague Peace Conferences of 1899 and 1907*, I, p. 210–11.

seemed destined, is not only the vindication of Washington's selection of Jay, and an adequate testimonial to the ability and legal attainments of its negotiator, but by common consent, the starting point of international arbitration.

The arbitration provisions of the treaty were not in question either then or later. But the Senate and subsequently the House were much concerned over the effect of the treaty arrangements with respect to West India trade. The Senate gave its advice and consent on condition that the President negotiate further upon that subject, and it added an additional article suspending the operation of Art. XII, on that subject.

The Arbitrations under the Treaty

By Art. V of the treaty the location of the River St. Croix as part of the American-Canadian boundary was left to the determination of three commissioners. Both parties agreed to consider that "decision as final and conclusive, so that the same shall never thereafter be called into question or made the subject of dispute or difference between them." The commission rendered its decision at Providence, Rhode Island, October 25, 1798.[1]

The boundary laid down was subsequently both called into question and the subject of disputes. Negotiations for a convention to carry the decision of the commissioners into effect were completed in 1803, but the convention was never ratified, and such was the fate of a similar convention in 1807.

By Art. V of the treaty of Ghent another commission was appointed, but the commissioners failed to agree, and the matter was eventually left by a convention, agreed to after lengthy negotiations in 1827, to the arbitration of the King of the Netherlands, whose award was rendered on January 10, 1831. Great Britain acquiesced to it but was willing to modify it by negotiation.

The United States Senate resolved in June, 1832, that the award was not obligatory. The Senate committee which examined the matter decided that the "one resort" which remains "where negotiation promises to yield nothing of good" was inexpedient. For if the "United States should ever willingly involve themselves

[1] John Bassett Moore, *History and Digest of the International Arbitrations to which the United States has been a Party*, I, p. 1, at 29.

in war with any power whatever to maintain an asserted right to territory long disputed which has been determined not to be theirs by an arbitrator chosen by themselves," nevertheless the award "will be considered by all the civilized world as the impartial opinion of a disinterested judge upon a question of much perplexity and difficulty. Such an opinion would have the effect of placing us (seemingly, at least) in the wrong, and therefore would greatly impair the moral force the United States have always brought into every contest in which they have hitherto been involved."[1]

Boundary disturbances continued[2] and eventually a commission appointed under the Webster-Ashburton treaty of August 9, 1842, succeeded in laying down the line in a joint report, dated June 28, 1847. It is interesting to note that the line thus fixed after more than 50 years of controversy differed only in detail from the award by the commissioners under the Jay treaty on October 25, 1798. The boundary was again resurveyed under the provisions of a treaty signed April 11, 1908.[3]

By Art. VI of the Jay treaty five commissioners were provided for to determine the compensation due to British creditors for debts still owing to them by citizens or inhabitants of the United States. The debts in question were largely mercantile and not a few states had since the peace passed legislation falling under the treaty definition of constituting lawful impediments to payment.

The commission met at Philadelphia on May 29, 1797. On February 19, 1799, a majority of the commission was of the opinion that the claimant Inglis "was not *now* obliged to go

[1] *Compilation of Reports of Committee on Foreign Relations, United States Senate, 1789–1901*, V, p. 582. (Sen. Doc. No. 231, 56th Cong., 2d sess.)

[2] The tension at times amounted to almost warlike activities. The act of March 3, 1839 (5 Statutes at Large, 355) appropriated $10,000,000 and authorized the President "to resist any attempt on the part of Great Britain, to enforce by arms, her claim to exclusive jurisdiction over that part of the state of Maine which is in dispute between the United States and Great Britain; and for that purpose, to employ the naval and military forces of the United States and such portions of the militia as he may deem it advisable to call into service." Other appropriations for like purposes are in acts of January 15, 1832, March 2, 1833, and January 30, 1838 (4 Statutes at Large, 533, 652, and 5 *ibid.* 209).

[3] *International Boundary Commission.* Joint report upon the survey and demarcation of the boundary between the United States and Canada from the source of the St. Croix River to the St. Lawrence River (Washington, 1925), Appendices I and II, p. 269–321.

through a course of judicial proceedings, for the purpose of trying the experiment whether the courts would decide differently from the decisions which had been given preceding the treaty of amity."[1] "In order to prevent a vote on this resolution," the two American commissioners withdrew. By the constituent article one commissioner on each side and the fifth commissioner had the "power to do any act appertaining to the said commission." The withdrawal of both Americans thus blocked action. The majority of the commission offered an explanatory resolution, and the Americans again withdrew. They seceded again on February 26, when the majority offered a resolution aimed at ending the deadlock. The commission continued with the consideration of other cases, and on July 9, 1799, took up the claim of Andrew Allen, who "after being a subject of Pennsylvania, joined the British forces in December, 1776, and returned to his native allegiance." The British commissioners maintained that Allen was consequently a British subject within the meaning of Art. VI of the Jay treaty. "To prevent a vote on this resolution, the American commissioners withdrew.[2]" On July 16 one of the British commissioners expressed the opinion, in which two of his colleagues are said to have concurred, "that the United States stood from the beginning of the Revolution down to the treaty of peace in a state of rebellion toward Great Britain, whatever may have been their relation toward other powers." On this declaration being made, Samuel Sitgreaves, an American commissioner, withdrew. His colleague, Thomas Fitzsimons, did not return the following day. On July 19 the two American commissioners in a note to the other three asserted that it was improper for them, under the existing circumstances, to give their further attendance. On September 4 the dissolution of the board was announced after a lengthy correspondence between the commissioners.

Lord Grenville, the British minister for foreign affairs, while admitting that the British commissioners had probably pushed their conception of the treaty too far, declared that the action of the American commissioners would in a great measure defeat the ends of the treaty. He protested against the secession of the American commissioners but was willing to negotiate further

[1] Moore, *loc. cit.*, p. 289.

[2] *Ibid.*, p. 291.

for a settlement of the claims, which in the gross amount as filed amounted to $24,809,969.37. It is, of course, true that claims as presented are always grossly exaggerated. On June 15, 1800, the Secretary of State instructed the American minister at London that not more than £600,000 would be paid. Eventually a convention was signed on January 8, 1802, by which Art. VI of the treaty of 1794 was annulled, and the United States agreed to pay to Great Britain £600,000 ($2,664,000), which was duly appropriated and paid.[1]

By Art. VII of the treaty a commission of five was set up to sit in London for the adjudication of claims of citizens of the United States "by reason of irregular captures and condemnations of their vessels and their property" by the British in the wars then existing between Great Britain and France. The difficulties encountered by the United States Government with citizen Genet were connected with the incidents from which the claims referred to arose. The commission formally began its work on October 10, 1796. Soon occurred a sharp dissension over the contention of the British as to the finality of decrees of the English High Court of Appeals in prize cases, the admission of which the American commissioners felt would practically exclude all claims.

The British Government consulted the Lord Chancellor, who overruled the contention of the British agent, remarking that "the reasons assigned by him against the jurisdiction of the commissioners, or in bar of the claim, are the very cases which it was intended should be examined and decided by the commissioners."[2] The Lord Chancellor later invited four of the commissioners to his house, where further understandings were laid down by him.

The commission was suspended from July 20, 1799, to February 15, 1802, as part of the British protest against the action of the American commissioners under Art. VI of the Jay treaty. The board finally closed its work on February 24, 1804, having considered well over a thousand cases. The awards in favor of Americans are given as $5,849,082;[3] while awards against them amounted to $143,428.

[1] Moore, *loc. cit.*, p. 298.

[2] Moore, *loc. cit.*, p. 326.

[3] Moore, *loc. cit.*, p. 343; Samuel Flagg Bemis, *Jay's Treaty*, p. 320.

2. TREATY OF GUADALUPE HIDALGO, 1848

The peace movement in the United States began in August, 1815, when the New York Peace Society, the first in the world, was organized. The Massachusetts Peace Society followed on December 26, 1815. From those beginnings developed, in the course of the next 30 years, a remarkably active public interest in peace, of which arbitration was regarded as the keystone.

Between 1837 and 1856 petitions were showered on Congress in behalf of arbitration from groups in cities, towns and counties in the states of Connecticut, Georgia, Illinois, Iowa, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Wisconsin. On March 3, 1851, the General Assembly of Vermont forwarded to Congress a joint resolution in favor of arbitration. A dozen societies, several of national scope, petitioned Congress at various times.[1] Reports on the subject were made to the House of Representatives on June 13, 1838, January 17, 1839, May 11, 1846; and to the Senate on February 5, 1851, and February 22, 1853.[2]

The net result of all this activity seems to have been the inclusion of Art. 21 in the treaty of Guadalupe Hidalgo of February 2, 1848, which is still in force[3] and reads as follows:[4]

Art. XXI. If unhappily any disagreement should hereafter arise between the Governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of

[1] For a summary by reference see title "Arbitration" in Adelaide R. Hasse, *Index to United States Documents relating to Foreign Affairs, 1828–1861.*

[2] See 25th Cong., 2d sess., House report 979; 25th Cong., 3d sess., House report 234; 29th Cong., 1st sess., House report 671; 31st Cong., 2d sess., Senate report 270; 33d Cong., 2d sess., Senate report 423, respectively.

[3] Art. III of the arbitration convention of March 24, 1908, provided that "the foregoing stipulations in no wise annul, but on the contrary, define, confirm and continue in effect the declarations and rules contained in Art. XXI of the treaty" of February 2, 1848. The treaty of 1908, however, expired by limitation on June 27, 1913.

[4] *Treaties, Conventions* . . . 1776–1909, I, p. 1117.

peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

Previous to the inclusion of this article in the treaty of peace, the United States had negotiated claims conventions on April 11, 1831, and January 30, 1843, with Mexico. Subsequently to the treaty a general claims convention was signed on January 4, 1868, the commission under which was extended by several protocols. Arbitrations on specific subjects have been held with Mexico on various occasions, but seem never to have been based on the article of the treaty of Guadalupe Hidalgo.

Treaty Terms not Applied

In 1914 Victoriano Huerta was in *de facto* control of the Mexican Government at Mexico City. On April 9 Mexican soldiers at Tampico arrested a paymaster and whaleboat's crew of the U. S. S. *Dolphin*, who had landed to load gasoline purchased on shore. The incident, which resulted in the subsequent occupation of Vera Cruz, created a critical posture of American-Mexican affairs. On April 15 Nelson O'Shaughnessy, the American chargé at Mexico City, had a long conference with General Huerta, "the general tone of which was exceedingly frank," and in which Huerta "unbosomed himself." The O'Shaughnessy dispatch states that Huerta suggested "that if the American Government would agree to simultaneous salutes, he would be only too pleased to do this;" but "that he did not desire to salute first because he believed that the United States Government would not return the salute and would thereby humiliate his Government." Mr. O'Shaughnessy continued: "He said that if the American Government would not agree to this that the question could go to The Hague

and he asked the Minister for Foreign Affairs who was present if the arbitration treaty between Mexico and the United States would not cover this case, and he said that it would."[1]

In a reply, Secretary of State Bryan telegraphed on April 17: "Please express to him our gratification that he is ready to meet the full terms of international courtesy, and say to him that we hope that there will be no further discussion as to the exact method of an exchange of salutes. That method is fixed by clearly defined international practice. It could in no circumstances be a subject for discussion by such a tribunal as that of The Hague."[2] On April 18 Mr. O'Shaughnessy telegraphed: "With regard to the Tampico incident, the Minister for Foreign Affairs spoke of appealing to the treaty of Guadalupe Hidalgo as a solution (Art. 21)."[3]

On April 20 the President of the United States in an address to Congress announced his intention to take forcible action. The Senate and House adopted the following resolution:[4]

> *Resolved*, That the President is justified in the employment of the armed forces of the United States to enforce his demands for unequivocal amends for affronts and indignities committed against the United States; be it further
>
> *Resolved*, That the United States disclaims any hostility to the Mexican people or any purpose to make war upon them.

The occupation of Vera Cruz followed, and no more was heard of an appeal to Art. XXI of the treaty of 1848.

3. CONGRESSIONAL ATTITUDE, 1838–1853

Between 1838 and 1846 the Committee on Foreign Affairs of the House of Representatives declined to push arbitration on three occasions, in each case reporting to the House a request that it be discharged from further consideration of the subject. On June 13, 1838, Hugh S. Legaré of South Carolina so reported with respect to a memorial of the New York Peace Society and others. He concluded a somewhat lengthy report as follows:[5]

[1] *Foreign Relations*, 1914, p. 464.

[2] *Ibid.*, p. 466.

[3] *Ibid.*, p. 468.

[4] *Ibid.*, p. 483.

[5] 25th Cong., 2d sess., House report 979; *Cong. Docs.*, Vol. 336.

The truth is, that every war hereafter, will, by the social disorders that are likely to accompany or follow such an event, throw additional obstacles in the way of future ones. The sword will thus prove the surest guaranty of peace.

Your committee, therefore, do not think the establishment of a permanent international tribunal, under the present circumstances of the world, at all desirable; but they heartily concur with the memorialists in recommending a reference to a third power of all such controversies as can safely be confided to any tribunal unknown to the constitution of our own country. Such a practice will be followed by other powers, already inclined, as we have seen, to avoid war, and will soon grow up into the customary law of civilized nations. They conclude, therefore, by recommending to the memorialists to persevere in exerting whatever influence they may possess over public opinion, to dispose it habitually to the accommodation of national differences without bloodshed.

On January 17, 1839, Mr. Legaré from the same committee asked that it be discharged from further consideration of the subject, which had been brought up by other petitions from memorialists.[1]

On May 11, 1846, a petition inspired by the publication six years before of William Ladd's *Essay on a Congress of Nations* and chiefly urging the codification of international law, was acted upon in a similar manner. Howell Cobb of Georgia cited the 1838 report as conclusive in asking the discharge of the committee and, as to the codification of international law, stated that "the impracticability of the scheme was a sufficient response to all the appeals which are made in its behalf."[2]

Foote Resolution

On December 16, 1850, Robert C. Winthrop of Boston presented to the Senate a memorial from the American Peace Society. Simultaneously several other memorials of the same character were before Congress. On February 5, 1851, Senator Henry Stuart Foote of Mississippi reported the following resolution from the Committee on Foreign Relations to the Senate:[3]

[1] 25th Cong., 3d sess., House report 194, *Cong. Docs.*, Vol. 351.

[2] 29th Cong., 1st sess., House report 671; *Cong. Docs.*, Vol. 490.

[3] Sen. rept. 270, 31st Cong., 2d sess., *Cong. Docs.*, Vol. 593; Sen. Doc. No. 231, 56th Cong., 2d sess., pt. 6, p. 105; *Journal* of the Senate, *Cong. Docs.*, Vol. 586, p. 147.

Whereas appeals to the sword for the determination of national controversies are always productive of immense evils; and whereas the spirit and enterprises of the age, but more especially the genius of our own Government, the habits of our people, and the highest permanent prosperity of our Republic, as well as the claims of humanity, the dictates of enlightened reason, and the precepts of our holy religion, all require the adoption of every feasible measure consistent with the national honor and the security of our rights to prevent, as far as possible, the recurrence of war hereafter: Therefore,

Resolved, That in the judgment of this body it would be proper and desirable for the Government of these United States, wherever practicable, to secure in its treaties with other nations a provision for referring to the decision of umpires all future misunderstandings that can not be satisfactorily adjusted by amicable negotiation, in the first instance, before a resort to hostilities shall be had.

Presenting the resolution, Senator Foote said, "The committee adopted the resolution with great unanimity; it has been cautiously and circumspectly prepared, and I anticipate no difficulty in the Senate's adopting it at once." [1]

Senator Jeremiah Clemens of Alabama moved to "let it lie over;" and it has from that day to this.

Report on Underwood Resolution

Senate Report No. 423 of the 32d Congress, made to the Senate on February 22, 1853, from the Committee on Foreign Relations by Senator Joseph R. Underwood of Kentucky, recommended the adoption of the following resolution:

Resolved, That the Senate advise the President to secure, whenever it may be practicable, a stipulation in all treaties hereafter entered into with other nations providing for the adjustment of any misunderstanding or controversy which may arise between the contracting parties by referring the same to the decision of disinterested and impartial arbitrators, to be mutually chosen.

Though no minority report was presented, the Committee on Foreign Relations [2] was in reality against the resolution, which

[1] *Cong. Globe*, 23, p. 437.

[2] The committee then consisted of James M. Mason (chairman), Va.; Moses Norris, Jr., N. H.; Stephen A. Douglas, Ill.; Willie P. Mangum, N. C.; and Joseph R. Underwood, Ky.

reached the floor of the Senate thanks to a letter to Senator Underwood from Senator Stephen A. Douglas of Illinois, in which he said:[1]

> Being informed that the members of the Committee on Foreign Relations are equally divided, I therefore hereby authorize you to report the resolution and your argument, . . . but deem it proper, at the same time, to say that my object is to get your resolution and report before the Senate for the purpose of consideration, not having been in committee when the subject was disposed of, and not intending to commit myself in favor of your resolution.

The report accompanying this resolution is as sound an analysis of pacific settlement and its relation to war as can be found in or out of official documents. It stated that the committee regarded "the tendencies of war to be injurious to the progress of mankind in science, art, morals, civilization and happiness; and hence it can only be justified upon the ground that it is a less evil than that which can only be avoided by the resort to war. In this view, war presents itself as a choice between evils."

The report continues with an examination of the effect of war and the war system. As a consequence of this review, the committee was willing to advise and recommend "that in the treaties which are hereafter made with foreign nations, it shall be stipulated between the contracting parties that all differences which may arise shall be referred to arbitrators for adjustment. Under such stipulation the . . . arbitrators . . . would be selected after the occurrence of the difficulty . . . If the parties could not agree in the selection of arbitrators, and could not themselves settle the controversy by a new treaty, then either might undertake to redress, according to its own judgment, the grievance complained of. But, before a resort to arms, in order to retain the respect of mankind, it would be necessary to make an honest effort to select capable and impartial arbitrators. The least trickery to defeat the arbitration, and at the same time apparently comply with the requirements of the treaty, would be certain to bring general odium on the guilty party — to avoid which nations and individuals in this age of the world will do much."

The committee regarded it as unlikely that arbitrators would make a fraudulent award; but, if that should occur, "the honest

[1] *Cong. Globe*, 26, p. 761.

sentiment of mankind would justify the nation injured by it in resisting its execution by war should milder means prove ineffectual . . . It may be asked, Why go through the forms of an arbitration unless the award is to be conclusive and final? What good can result from the delay, the expense, and the ceremonies of an arbitration if the parties to it may, after it is over, still renew their quarrel and go to war? We answer, much good. The necessary delay in selecting the arbitrators and preparing for and conducting the trial will prevent hasty declarations of war. It will allow time for the blood to cool and for the mind to reflect. Calm deliberation is the friend of peace. The award will show the contending nations what opinions disinterested judges entertain of their quarrel. . . .

"An award sanctioned by the common sense and justice of the world," continued the committee, "could not be resisted by either party unless ruin, manifest and inevitable, would be the consequence of executing it. In that event there is a higher principle which would allow resistance — the principle of self-preservation . . . But just arbitrators will always regard the condition of the party against whom the award is to be made, and will not require impossible things — things that are morally impossible, because they can not be conceded without ruin.

"Nations, by a reference of their disputes to arbitrators, might reasonably calculate that, however onerous the award, its fulfillment would not cost as much as the resort to war. If its execution presents a burden somewhat oppressive, still that which would be saddled upon the people by war, in all probability, would be more grievous.

"It sometimes happens that 'the point of honor' between nations seems to demand immediate action, and a blow is given without time for deliberation. The nation struck resents, and war is the consequence. Treaty stipulations requiring arbitration would be a salutary remedy in such cases. The 'point of honor' would then consist in adhering to the treaty."

The committee did not hesitate to recommend its resolution "as a part of our permanent foreign policy." The committee found "the present state of the world . . . peculiarly favorable for the introduction of such a policy;" while "the United States, of all others, is the proper country to propose this policy to the nations of the earth. We have shown in our past history a

capacity for war. The love of military glory is a passion as strong with us as any other people, if not stronger. Our institutions invite every citizen to become a soldier in time of war. Our ranks are filled with volunteers panting for an opportunity to distinguish themselves. Our young men rush to battle with the full assurance that the highest civil honors often reward the toils and dangers of the triumphant soldier. Our institutions, therefore, tend to make us a military people. We are rapidly growing in power. Our progress is without a parallel. Under such circumstances, in proposing a policy of peace, it can not be supposed that we are influenced by any other motives than those which spring from the purest philanthropy. The policy proposed is adverse to aggression. It respects the rights of all nations."[1]

Following the reading of the Douglas letter to the Senate, James M. Mason of Virginia, chairman of the Committee on Foreign Relations, said: "I wish to say that the minority of the committee, of which I was one, utterly dissented from the conclusion as well as the reasoning."

The report was consigned to print. The resolution, opposed by the chairman of the originating committee, was never debated on the floor of the Senate.

4. THE *ALABAMA* CLAIMS, 1872

In the 50's the moral enthusiasm which had been concentrated on peace shifted to slavery and it was not until after the close of the Civil War that either private or public interest returned to the subject of better international relations. The conduct of that war had brought about a very tense situation in American-British relations, which was further complicated by many other matters of dispute between the two Governments. During the course of the war Charles Francis Adams, the American minister at London, had frequent occasion to protest against the conduct of Great Britain as a neutral, which involved both the correctness of British recognition of the Confederate States as a belligerent and British liability for depredations on American commerce by vessels built for the account of the Confederacy. These questions obviously involved a responsibility and liability of

[1] Sen. Doc. No. 231, 56th Cong., 2d sess., VI, 107, at 108, 114–116; the report is also in *Cong. Docs.*, Vol. 671.

Great Britain, which stood to lose if the violations of international law alleged by the United States were approved.

The United States was anxious to bring the matter to an issue. On October 23, 1863, Mr. Adams wrote to Earl Russell:

> I am directed to say there is no fair and equitable form of conventional arbitrament or reference to which [the United States] will not be willing to submit.

Earl Russell nearly two years later said that the question could not "be put to a foreign government with any regard to the dignity and character of the British crown and the British nation. Her Majesty's Government are the sole guardians of their own honor. They can not admit that they have acted with bad faith in maintaining the neutrality they professed." He declined either to make reparation or compensation for the captures made by the *Alabama*, or to refer the question to any foreign state.

Agitation of the question continued and feeling in England shifted to a conviction that large and unsettled questions of neutral duties, which should be determined, were involved in the matters at issue.

Lord Stanley had succeeded Earl Russell as British foreign secretary, and in November, 1866, intimations emanated from London that the principle of arbitration might be adopted. The United States insisted that the controversy should be submitted to arbitration without definition of the points at issue, and that the United States had a claim on account of the British proclamation of 1861, which accorded belligerent rights to the Confederacy and "therefore was an act of wrongful intervention, a departure from the obligation of existing treaties, and without the sanction of the law of nations."

After lengthy negotiations a convention was signed on January 14, 1869, which was rejected by the Senate by a vote of 44 to 1 on April 13. Negotiations, official and unofficial, continued and eventually on May 8, 1871, a treaty was signed.

This treaty, which largely increased the questions to be arbitrated and was technically superior to the former one, provided for the arbitration of the *Alabama* claims, the *Alabama* being one of a group of vessels which had been built and fitted out in England and manned by Confederate officers and crews for prey-

ing on commerce of the United States during the Civil War. The treaty itself provided what has since become a normal form for arbitration of the questions at issue by a tribunal of five arbitrators.[1] Damages might be awarded, but the treaty avoided either limiting the scope of the arbitration or basing the decisions entirely upon the record by providing three rules to govern the decisions. These defined the duties of a neutral government in case of war and are known in international law as "the rules of the treaty of Washington."

The United States Senate advised and consented to the treaty on May 24, and the ratifications were exchanged on June 17.

The tribunal met in the City Hall[2] at Geneva, Switzerland, on December 15, 1871, and the award was rendered on September 14, 1872; $15,500,000 in gold being the sum granted to the United States as reparation. The receipt of the United States Treasury for this sum is dated September 9, 1873, five days before the stipulated due date. Additional claims, both American and British, were decided under the treaty, 181 British claims out of 478 being awarded a total of $1,929,819 and all the American claims being dismissed.[3]

The *Alabama* claims made a tremendous impression throughout the world. In the United States the victory resulting from the arbitration heightened interest in the method.

5. CONGRESSIONAL RESOLUTIONS, 1874

On May 31, 1872, Senator Charles Sumner of Massachusetts, who was an eloquent peace advocate, introduced into the Senate a lengthy resolution "concerning arbitration as a substitute for war in determining differences between nations."[4] On the previous January 22, John B. Storm of Pennsylvania had introduced a similar resolution in the House.[5] It was not until 1874 that either initiative bore fruit; the action being perhaps affected by Sumner's death on March 11 of that year.

[1] The rejected treaty provided for one commissioner of each party, an umpire to be selected in case of disagreement.

[2] The hall in the Hôtel de Ville where the tribunal met was renamed the Hall of the Alabama in memory of the event.

[3] Moore, *International Arbitrations*, I, p. 495–682 and 683–702.

[4] *Cong. Globe*, 42d Cong., 2d sess., pt. V, p. 4106–7.

[5] *Ibid.*, pt. I, p. 497.

The Sumner resolution consisted of three points. On June 9, 1874, Senator Hannibal Hamlin of Maine presented a report and resolution from the Committee on Foreign Relations, which embodied the third point of the Sumner resolution.

In the House on June 17, 1874, Stewart L. Woodford of New York moved to suspend the rules and pass a concurrent resolution, which was done without debate in the following form:[1]

Resolved, by the Senate[2] *and House of Representatives,* That the President of the United States is hereby authorized and requested to negotiate with all civilized powers who may be willing to enter into such negotiation for the establishment of an international system whereby matters in dispute between different governments agreeing thereto may be adjusted by arbitration, and if possible without recourse to war.

In the House immediately after the disposition of the Woodford resolution, Godlove S. Orth of Indiana reported another resolution by unanimous consent from the Committee on Foreign Affairs, and it was also adopted without debate in the following form:[3]

Whereas, war is at all times destructive of the material interests of a people, demoralizing in its tendencies, and at variance with an enlightened public sentiment; and

Whereas, differences between nations should in the interests of humanity and fraternity be adjusted if possible by international arbitration: Therefore,

Resolved, That the people of the United States, being devoted to the policy of peace with all mankind, enjoining its blessings and hoping for its permanence and its universal adoption, hereby through their representatives in Congress recommend such arbitration as a rational substitute for war, and they further recommend to the treaty-making power of the Government to provide if practicable that hereafter in treaties made between the United States and foreign powers war shall not be declared by either of the contracting parties against the other until efforts shall have been made to adjust all alleged cause of difference by impartial arbitration.

Immediately after the passage of the resolution Representative Lionel A. Sheldon of Louisiana moved to reconsider, and then moved to lay his motion to reconsider on the table. The latter

[1] *Cong. Record,* 2, pt. VI, p. 5114.

[2] The resolution seems never to have been presented to the Senate for its concurrence.

[3] *Cong. Record,* 2, pt. VI, p. 5124.

motion was agreed to. That procedure has the parliamentary effect of making it impossible later to bring into question the vote passing a measure. There is no indication in the proceedings whether the Sheldon motion was made as a matter of formality or with the intention of forestalling an attempt to reconsider.

Six days after the House action the resolution introduced by Senator Hamlin in the Senate came up for action there. The Senate chose to act upon the resolution reported previously from its own Committee on Foreign Relations rather than to follow the suggestion of the House and adopt the concurrent resolution which it had passed. The Woodford resolution declared a willingness to enter into negotiations for establishing an international system of arbitration. The Senate evidently was not willing to go so far. It had already passed over the first two resolutions of the original Sumner motion.[1] And now, having been requested by the House to concur in a policy, the Senate contented itself with agreeing, without debate on June 23, the last day of the session, to its own committee's resolution, which read as follows:[2]

Resolved, That the United States, having at heart the cause of peace everywhere, and hoping to help its permanent establishment between nations, hereby recommend the adoption of arbitration as a just and practical method for the determination of international differences, to be maintained sincerely and in good faith, so that war may cease to be regarded as a proper form of trial between nations.

6. SWISS PROPOSAL, 1883

On April 1, 1883, Col. Emile Frey, Swiss minister to the United States and previously an officer in the American army during the Civil War, addressed a confidential inquiry to Secretary of State Frelinghuysen, regarding the possibility of concluding a

[1] These read:

"1. *Resolved*, That in the determination of international differences arbitration should become a substitute for war in reality as in name, and, therefore, co-extensive with war in jurisdiction, so that any question or grievance which might be the occasion of war or of misunderstanding between nations should be considered by this tribunal.

"2. *Resolved*, That any withdrawal from a treaty recognizing arbitration, or any refusal to abide the judgment of the accepted tribunal, or any interposition of technicalities to limit the proceedings, is to this extent a disparagement of the tribunal as a substitute for war, and therefore hostile to civilization."

[2] *Cong. Record*, 2, pt. VI, p. 5407; the report is Sen. rept. No. 426, 43d Cong., 1st sess.; *Cong. Docs.*, Vol. 1587.

general treaty of arbitration between the two countries. Mr. Frelinghuysen accepted the suggestion, and on July 24, 1883, a project of treaty was adopted by the Swiss Federal Council. This draft was the subject of negotiations, which, however, were never concluded.[1] The Swiss proposal contained the following:[2]

1. The contracting parties agree to submit to an arbitral tribunal all difficulties which may arise between them during the existence of the present treaty, whatever may be the cause, the nature or the object of such difficulties.

5. The contracting parties bind themselves to observe and loyally to carry out the arbitral sentence.

It is interesting to note that, having failed in this initiative toward the United States, the Swiss Federal Council pursued its policy and incorporated an arbitration article to the same effect in treaties of amity, establishment and commerce signed with Salvador on October 30, 1883, the South African Republic on December 6, 1885, Ecuador on June 22, 1888, and with the Independent State of the Kongo on November 16, 1889.[3]

It is not known whether the complete obligatory character of the Swiss proposal or some other reason was responsible for the American failure to proceed with the negotiations.

7. ANGLO-AMERICAN PROJECT, 1897

An active movement for arbitration started early in 1887 with an appeal of the French society of the Friends of Peace to the civilized world.[4] The peace societies in England, France and the United States were then continuously active. Encouraged by Andrew Carnegie, William Randal Cremer circulated a memorial in the British House of Commons which was signed by 232 members and was presented to the President and to both Houses

[1] See Instructions to American Delegates to The Hague Peace Conference, Annex A.

[2] W. Evans Darby, *International Tribunals* (4th ed.), p. 378.

[3] The article in those treaties reads:

"In case a difference should arise between the two contracting countries and it should not be amicably arranged by diplomatic correspondence between the two Governments, these latter agree to submit it to an arbitral tribunal, whose decision they engage loyally to respect and to execute."

[4] *Foreign Relations*, 1887, p. 284.

of Congress by a delegation of the members of Parliament. The memorial read:[1]

The undersigned members of the British Parliament learn with the utmost satisfaction that various proposals have been introduced into Congress, urging the Government of the United States to take the necessary steps for concluding with the Government of Great Britain a treaty which shall stipulate that any differences or dispute arising between the two Governments, which can not be adjusted by diplomatic agency, shall be referred to arbitration. Should such a proposal happily emanate from the Congress of the United States, our best influence shall be used to insure its acceptance by the Government of Great Britain. The conclusion of such a treaty would be a splendid example to those nations who are wasting their resources in war-provoking institutions, and might induce other governments to join the peaceful compact.

The President, in responding to the memorial, said:[2]

I am reminded that in the administration of government, difficulty often arises in the attempt to carefully apply ideas which in themselves challenge unqualified approval. Thus it may be that the friends of international arbitration will not be able at once to secure the adoption, in its whole extent, of their humane and beneficent scheme. But surely great progress should be made by a sincere and hearty effort. I promise you a faithful and careful consideration of the matter; and I believe I may speak for the American people in giving the assurance that they wish to see the killing of men for the accomplishment of national ambition abolished, and that they will gladly hail the advent of peaceful methods in the settlement of national disputes, so far as this is consistent with the defense and protection of our country's territory, and with the maintenance of our national honor, when it affords a shelter and repose for national integrity, and personifies the safety and protection of our citizens.

Tribunal for International Arbitration

Senator James F. Wilson of Iowa on December 12, 1887, had introduced a bill requesting the President to institute negotiations with other Governments for the creation of a tribunal for international arbitration "whereby all difficulties and disputes between nations may be peaceably settled and wars prevented." On April 9, 1888, Senator Allison introduced a similar bill specifying Great Britain and France as the states with whom negotiations were

[1] *American Advocate of Peace*, Vol. 49, p. 156.

[2] Howard Evans, *Sir Randal Cremer, his Life and Work*, p. 127–128.

to be undertaken. On June 13, 1888, a resolution on the subject was reported to the Senate by Chairman John Sherman of the Committee on Foreign Relations and was unanimously passed.[1]

Meantime, in December, 1887, members of the French Chamber of Deputies began circulating a petition, which resulted in several hundred signatures and which was addressed to the minister of foreign affairs.[2] A world exposition was held in Paris in 1889, and on the invitation of the French Government the First Universal Peace Congress was held at that time and gave great impetus to the movement, the congresses continuing annually through 1894, that of 1893 being held at Chicago, and at longer intervals up to the present time.

The Sherman Senate resolution of 1888 was not acted upon by the House. Senator Sherman introduced it again on December 9, 1889, as a concurrent resolution, and it was agreed to by the Senate on February 14, 1890, and by the House of Representatives on April 3, 1890. In that form it read:[3]

Resolved by the Senate (the House of Representatives concurring), That the President be, and is hereby, requested to invite, from time to time as fit occasions may arise, negotiations with any Government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means.

Effect of Petitions

This resolution was regarded as a response to the Parliamentary memorial of 1887 and inspired a great popular activity in England, resulting in petitions by nearly 1,300,000 persons. Eventually the House of Commons responded in a resolution adopted June 16, 1893, which read:[4]

[1] *Cong. Record*, Vol. 19, p. 25, 2793 and 5239. Bills (H. R. 1715, 1793 and 8840) were also introduced in the House by Messrs. McKinley, Yardley and Kerr, *ibid.*, p. 225, 229 and 2409.

[2] *American Advocate of Peace*, Vol. 50, p. 124.

[3] Misc. Doc. No. 113, 51st Cong., 1st sess.; *Cong. Docs.*, Vol. 2768.

[4] *Parl. Deb.*, 4th series, XIII, 1240–1273. The resolution was adopted on June 16 and not on July 16 as stated in the British note covering it to the Department of State (*For. Rel.*, 1893, p. 346, 352). The British discussions of the period will be found in *Parl. Deb.*, 4th series, I, 88, 1813; III, 1664–1676, February 9, March 3 and April 29, 1892.

Resolved, That this House has learnt with satisfaction that both Houses of the United States Congress have, by resolution, requested the President to invite from time to time, as fit occasions may arise, negotiations with any Government with which the United States have or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency may be referred to arbitration and peaceably adjusted by such means; and that this House, cordially sympathizing with the purpose in view, expresses the hope that her Majesty's Government will lend their ready cooperation to the Government of the United States, upon the basis of the foregoing resolutions.

President Cleveland in his next message to Congress expressed his signal pleasure at being able to lay the resolution before that body and his gratification "that the sentiment of two great and kindred nations is thus authoritatively manifested in favor of the rational and peaceable settlement of international quarrels by honorable resort to arbitration." [1]

Finally on July 8, 1895, the French Chamber of Deputies unanimously passed this resolution: [2]

The Chamber invites the Government to negotiate, as soon as possible, a permanent treaty of arbitration between the French Republic and the Republic of the United States of America.

General Arbitration Treaty

After all this expression of desire, the Anglo-American negotiations for a general arbitration treaty began in the spring of 1895 between Secretary of State Walter Q. Gresham and Sir Julian Pauncefote, the death of Mr. Gresham in May, 1895, halting the pourparlers. On March 5, 1896, Lord Salisbury reverted to the matter at the time of the Venezuelan boundary controversy. In his note to Sir Julian Pauncefote, it was considered that not all subjects of dispute could be referred to arbitration, so that "the limits ultimately adopted must be determined by experiment." [3]

Meantime, "cases that arise between states belong to one of two classes. They may be private disputes in respect to which

[1] James D. Richardson, *Messages and Papers of the Presidents*, VIII, p. 5874.

[2] *Foreign Relations of the United States*, 1895, p. 427; *cf.* Richardson, *Messages and Papers of the Presidents*, p. 6060.

[3] Sen. Doc. No. 231, 56th Cong., 2d sess., VIII, p. 394 *ff.*; *Cong. Docs.*, Vol. 4054.

the state is representing its own subjects as individuals, or they may be issues which concern the state itself considered as a whole. . . . For the first class of differences the suitability of international arbitration may be admitted without reserve. It is exactly analogous to private arbitration, and there is no objection to the one that would not apply equally to the other. There is nothing in cases of this class which would make it difficult to find capable and impartial arbitrators."

"A claim to territory or sovereign rights belongs to the second" class and these stand on a different footing. "They concern the state in its collective capacity, and all the members of each state and all other states who wish it well are interested in the issue of the litigation."

"The difficulty which stands in the way of unrestricted arbitration" was considered to lie in the difficulty of finding an impartial arbitrator. However, the British foreign secretary submitted a plan which he thought would meet practical conditions and would offer "an opportunity of making a substantial advance." And he added, "If, under its operation, experience should teach us that our apprehensions as to the danger of reposing an unlimited confidence in this kind of tribunal are unfounded, it will be easy, by dropping precautions that will have become unnecessary, to accept and establish the idea of arbitration in its most developed form."

The suggestions which he presented were an arbitral board consisting of a national judicial officer of either party, who together would select an umpire, whose decisions should control. The award would be final with respect to private, pecuniary and other specified claims. The treaty also provided for arbitrating "any difference in respect to a question of fact or of international law, involving the territory, territorial rights, sovereignty or jurisdiction of either power, or any pecuniary claim or group of claims of any kind, involving a sum larger than £100,000."

But if such an award should be protested within three months as to an issue of fact or of international law by either party, the award would be reviewed by a court composed of three judges of the Supreme Courts of both parties, and should stand only in case the judges were for it by a majority of not less than five to one. Failing protest within three months, the award should be final.

Art. 5 was a statement that "any difference which, in the judgment of either power, materially affects its honor or the integrity of its territory, shall not be referred to arbitration under this treaty except by special agreement." The whole arrangement was further conditioned upon the stipulation that the two parties might agree in advance that the award would not be valid unless accepted by both.

Secretary of State Olney replied on April 11. He detected in the Salisbury drafting an implication that "national honor may sometimes be involved even in a claim for indemnity to an individual." His chief objection was to the possibility of review of a protested award. He proposed obligatory arbitration for the questions specified and "in respect of all controversies not in this treaty specially described: *Provided, however,* That either the Congress of the United States on the one hand, or the Parliament of Great Britain on the other, at any time before the arbitral tribunal shall have convened for the consideration of any particular subject matter, may by act or resolution declaring such particular subject matter to involve the national honor or integrity, withdraw the same from the operation of this treaty." His alternative also contemplated the finality of awards concurred in by all the arbitrators. If the award commanded a majority only, protest could be made within three months and in such case review would be had by three judges of the Supreme Court of each party, who should review the record and render a final decision. If this court should divide equally, three jurists, previously selected, should sit with them and "the award of the court so constituted, whether rendered unanimously or by a majority vote, shall be final."

Mr. Olney's arguments in favor of these changes were:

1. The scheme, as thus amended, makes all disputes *prima facie* arbitrable . . . unless affirmative action by the Congress or by the Parliament displaces the jurisdiction.

2. The scheme, as amended, puts where they belong the right and power to decide whether an international claim is of such nature and importance as not to be arbitrable, and as to demand assertion, if need be, by force of arms. . . .

3. The scheme, as amended, changes the arbitration machinery provided by Art. 4 in Lord Salisbury's draft in important particulars.

The changes referred to were intended to carry out the belief "that there can be no arbitration in the true sense without a final award."

Lord Salisbury in a reply of May 18 entered upon a discussion as to the meaning of the formulas then before the negotiators and discussed at some length the difficulties of arbitration with respect to territorial rights, which he felt should not be included in a formula in any thoroughgoing manner.

In reply on June 22 Mr. Olney described Lord Salisbury's dispatch as drawing a "clear distinction between controversies that are arbitrable as of course and controversies that are not so arbitrable. To the latter class are assigned territorial claims, while to the former belong . . . claims of every other description . . . The advantages of this sharp line of division . . . are very great, and the fact that it is now drawn shows that the progress of the discussion is eliminating all but the vital points of difference."

Mr. Olney's dispatch was devoted to securing a formula which would enable the parties to determine beforehand what territorial questions should be arbitrated, but should insure the finality of any award thereafter rendered.

The active negotiation of a text proceeded on the basis of those notes, and the treaty itself was signed at Washington on January 11, 1897, by Secretary of State Richard Olney and Sir Julian Pauncefote, the British minister. It was forwarded to the Senate on the same day by President Cleveland accompanied by a message in which he said:[1]

The provisions of the treaty are the result of long and patient deliberation and represent concessions made by each party for the sake of agreement upon the general scheme.

Though the result reached may not meet the views of the advocates of immediate, unlimited and irrevocable arbitration of all international controversies, it is nevertheless confidently believed that the treaty can not fail to be everywhere recognized as making a long step in the right direction and as embodying a practical working plan by which disputes between the two countries will reach a peaceful adjustment as matter of course and in ordinary routine.

In the initiation of such an important movement it must be expected that some of its features will assume a tentative character looking to a

[1] Richardson, *Messages and Papers of the Presidents*, p. 6178–79.

further advance, and yet it is apparent that the treaty which has been formulated not only makes war between the parties to it a remote possibility, but precludes those fears and rumors of war which of themselves too often assume the proportions of national disaster.

It is eminently fitting as well as fortunate that the attempt to accomplish results so beneficent should be initiated by kindred peoples, speaking the same tongue and joined together by all the ties of common traditions and common aspirations. The experiment of substituting civilized methods for brute force as the means of settling international questions of right will thus be tried under the happiest auspices. Its success ought not to be doubtful, and the fact that its ultimate ensuing benefits are not likely to be limited to the two countries immediately concerned should cause it to be promoted all the more eagerly. The examples set and the lessons furnished by the successful operation of this treaty are sure to be felt and taken to heart sooner or later by other nations, and will thus mark the beginning of a new epoch in civilization.

Profoundly impressed as I am, therefore, by the promise of transcendent good which this treaty affords, I do not hesitate to accompany its transmission with an expression of my earnest hope that it may commend itself to the favorable consideration of the Senate.

The Senate Debate

The Senate's executive sessions[1] on the treaty were less a debate than a parliamentary exercise. The injunction of secrecy was removed from its text on January 18. On February 1 it was reported to the Committee of the Whole from the Committee on Foreign Relations with an amendment.[2] On February 8 a motion to consider it in open executive session was defeated by a vote of 9 to 49; two amendments were introduced. On February 9 three senators introduced amendments. On February 12 one senator introduced an amendment. On February 13 three senators introduced amendments, including a perfecting one, and there was a second amending report from the committee.[3]

[1] Sen. Doc. No. 161, 58th Cong., 3d sess.; *Cong. Docs.*, Vol. 4766.

[2] The report left the treaty unchanged except for Art. I, to the end of which the following would be added:

"But no question which affects the foreign or domestic policy of either of the high contracting parties, or the relations of either to any other state or power, by treaty or otherwise, shall be a subject for arbitration under this treaty, except by special agreement." (Sen. Doc. No. 231, 56th Cong., 2d sess., pt. VIII, p. 388.)

[3] The committee amendment would add to Art. I:

"But said agreement to submit, together with its formulations in every case, before its final execution shall be referred to and shall be approved by, the President and Senate of the United States and her Britannic Majesty." (*Ibid.*, p. 388.)

A motion to adjourn was defeated. A roll call determined "no quorum," and adjournment was forced.

The term of President Cleveland was due to come to an end on the ensuing March 4, and the proceedings at this point took on a political complexion with the intention of carrying consideration of the treaty over into the next session, when McKinley would be President. On February 18 Chairman John Sherman of the Committee on Foreign Relations moved to consider the treaty and the motion was lost, 31 to 35. He repeated the motion, which was then carried, 32 to 27. Senator Knute Nelson moved that consideration of the treaty "be postponed until the first executive session of the Senate after March 3 next." A motion to adjourn was lost, 17 to 35. The Nelson motion was debated for a time, after which a motion to adjourn was carried.

On February 19 the Nelson motion brought about a stormy debate, punctuated by two roll calls and two votes, the last of which was a record one, which defeated the motion 20 to 31. An amendment to the treaty was introduced. An amendment to Art. I already introduced came up for debate. The question of no quorum being raised, the roll was called followed by a motion to adjourn, lost, 17 to 23. Debate was then continued by unanimous consent. A motion to adjourn was lost, 14 to 23, and it was ordered that the sergeant-at-arms request the attendance of senators. A motion to adjourn was lost, 16 to 25. "No quorum" resulted in a roll call. Motion to adjourn was lost, 18 to 24. "No quorum" resulted in roll call, and no quorum being present Chairman Sherman moved that the sergeant-at-arms request the attendance of senators; a vote being demanded, the motion carried, 23 to 8. In order to clear the decks, it was ordered "that the following senators be excused from attendance by reason of sickness: Messrs. Harris, George, Gear, Morrill, Hale, Kenney, Voorhees and Gorman; and the following on account of absence from the city: Messrs. Wolcott, Mitchell of Oregon, Clark, Walthall, Brice and Warren." A motion to adjourn was lost, 16 to 24. No quorum having voted, roll call showed 34 senators present — less than a quorum — so that the doors were opened, and the Senate adjourned.

That executive session was the last held by the Senate on the treaty during the Cleveland Administration.

Under McKinley Administration

President McKinley was inaugurated on March 4, 1897, and referred to the pending treaty in his inaugural address. In the passage devoted to foreign policy he said:[1]

> War should never be entered upon until every agency of peace has failed; peace is preferable to war in almost every contingency. Arbitration is the true method of settlement of international as well as local or individual differences. It was recognized as the best means of adjustment of differences between employers and employees by the 49th Congress in 1886, and its application was extended to our diplomatic relations by the unanimous concurrence of the Senate and House of the 51st Congress in 1890. The latter resolution was accepted as the basis of negotiations with us by the British House of Commons in 1893, and upon our invitation a treaty of arbitration between the United States and Great Britain was signed at Washington and transmitted to the Senate for ratification in January last. Since this treaty is clearly the result of our own initiative, since it has been recognized as the leading feature of our foreign policy throughout our entire national history — the adjustment of difficulties by judicial methods rather than force of arms — and since it presents to the world the glorious example of reason and peace, not passion and war, controlling the relations between two of the greatest nations of the world, an example certain to be followed by others, I respectfully urge the early action of the Senate thereon, not merely as a matter of policy, but as a duty to mankind. The importance and moral influence of the ratification of such a treaty can hardly be overestimated in the cause of advancing civilization. It may well engage the best thought of the statesmen and people of every country, and I can not but consider it fortunate that it was reserved to the United States to have the leadership in so grand a work.

The condition of the Treasury was forecast by the President in his inaugural address as necessitating the calling of an extra session of Congress. A special session of the Senate was held March 4 to 10, in which the treaty was not taken up. The first session of the 55th Congress convened on March 15, 1897. Senator Sherman had become Secretary of State on March 6, and was succeeded as chairman of the Committee on Foreign Relations by Cushman K. Davis of Minnesota.

Senator Davis on March 17 reported the arbitration treaty from the Committee on Foreign Relations in a greatly modified

[1] *Messages and Papers of the Presidents*, p. 6241.

form, there being seven additions to its text and eight elisions, of which five were in substitution for the negotiated phraseology. It was evident from these changes that the original document was by no means acceptable to the Senate, and the changes made were intended to meet objections which had been developing since the presentation of the treaty in January. The Senate was Republican as it had been in the preceding session, and the fact that the treaty under consideration had been negotiated by the Democratic Administration and was now sponsored by a Republican President seemed to make the atmosphere favorable to it.

Frank Hostility in Minority Report

The extensive revision given the treaty in the Committee on Foreign Relations did not satisfy John T. Morgan of Alabama and Roger Q. Mills of Texas, members of that committee.[1] On March 18 they presented a remarkably frank minority report concurring in all amendments proposed by the committee, but insisting upon others "that they deem necessary to make the compact less dangerous to the welfare and future peace of the country." Some of these they proceeded to discuss.

The minority felt that "we will be purblind if we relax our attitude and accept a paper guaranty of peace in place of the moral and military forces that are the supreme elements of strength in our splendid Republic." They closed by entering "our solemn protest against the ratification of the treaty." The report is interesting historically because it is a classic example of the almost incredible lengths to which denunciation may be carried by the combined influence of fervid patriotism, prejudice and suspicion. It was full of such statements as this: "Treaties are essentially temporary expedients, and in fact seem made to be broken, as fortresses are said to be made to be taken; and it is questionable after all whether an open field and the chance of a fair fight are not the best protection to a peace-loving nation, both in war and diplomacy."

[1] 55th Cong., 1st sess., Sen. Exec. B; reprinted in 56th Cong., 2d sess., Sen. Doc. No. 231, pt. VIII, p. 410–425.

Extensive Amendments

The treaty was before the Senate in Committee of the Whole on March 18, 19, 22, 24, 25, 26, 29, 30, 31, April 1, 15 and 19, when it was reported to the Senate. The resolution of ratification was perfected in the Senate on May 3 and the vote on advising and consenting to the treaty as amended took place on May 5.

The proceedings in Committee of the Whole from March 18 to April 19 were frequently punctuated by a demand for adjournment or a call of no quorum, but were chiefly characterized by Chairman Davis' almost innumerable motions to lay amendments on the table, all except one of those motions being successful. The chief incident of the debate was a motion by Senator Horace Chilton of Texas to restrict arbitration to matters "which may, as said questions arise, be deemed by them to be proper subjects for arbitration." This motion was introduced on March 25; was continuously debated on March 26, 29, 30; was withdrawn on March 31, reintroduced after the passage of another amendment and finally laid on the table the same day by a vote of 43 to 27. Senator Joseph B. Foraker of Ohio alone got an amendment by the guard of the committee. Chairman Davis' motion to lay his proposal on the table was lost 20 to 42 and Senator Foraker took advantage of the situation by getting three more amendments passed in quick succession.

In examining the amendments introduced and the amendments passed, it is almost impossible to conclude that the committee's insistence on its own phraseology left the treaty in any better shape than the spontaneous proposals of individual senators. However, after a debate lasting from January to May the minds of most senators had become wedded to some particular language, and when the resolution of ratification was perfected and ready for a two-thirds vote, it was impossible to obtain the requisite number. As the document had been amended, the Senate declined on May 5 to advise and consent to its ratification, 43 yeas, 26 nays, 14 not voting. It was announced that of those not voting 9 would have been yeas and 5 nays, so that the full vote may be regarded as 52 yeas and 31 nays.[1]

[1] The pairs on a two-thirds vote consist of three senators, two yeas to offset one nay. The proceedings state that in this instance there were four pairs of three and one of two.

Text of Treaty Rejected

The treaty as amended and rejected by the Senate read in its principal articles as follows:[1]

[Strike out the parts in brackets [ ] and insert the parts printed in *italics*. The amendments reported from committee are not identified; those originating in the Senate are footnoted.]

Article I

The high contracting parties agree to submit to arbitration in accordance with the provisions and subject to the limitations of this treaty all questions in difference between them which they may fail to adjust by diplomatic negotiation,[2] *but no difference shall be submitted under this treaty which, in the judgment of either power, materially affects its honor, the integrity of its territory, or its foreign or domestic policy; nor shall the question be submitted whether any treaty once existing continues in force; nor shall any claim against any state of the United States, alleged to be due to the Government of Great Britain, or any subject thereof, be a subject matter of arbitration under this treaty; Provided, That*[3] *any agreement to submit, together with its formulations, shall in every case, before it becomes final, be communicated by the President of the United States to the Senate with his approval, and be concurred in by two-thirds of the Senators present, and shall also be approved by her Majesty the Queen of the United Kingdom of Great Britain and Ireland.*

Art. II

All pecuniary claims or groups of pecuniary claims which do not in the aggregate exceed £100,000 in amount, and which do not involve the determination of territorial claims, shall be dealt with and decided by an arbitral tribunal constituted as provided in the next following article.

In this article and in Art. IV the words "groups of pecuniary claims" mean pecuniary claims by one or more persons arising out of the same transactions or involving the same issues of law and of fact.

Art. III

[Each of the high contracting parties shall nominate one arbitrator who shall be a jurist of repute and the two arbitrators so nominated shall within two months of the date of their nomination select an umpire.]

[1] The full text is in Senate rept., Exec. D, 55th Cong., 1st sess.; Sen. Doc. No. 231, 56th Cong., 2d sess., pt. VIII, p. 389.

[2] The italicized portion added by the Senate.

[3] The committee amendment of March 17 from this point on.

Each of the high contracting parties shall nominate in each case submitted[1] *two arbitrators who shall be jurists of repute, and the two nominated by the President of the United States shall be appointed by and with the advice and consent of the Senate, and the four arbitrators shall, within two months from the date of their appointment, select an umpire.* In case they shall fail to do so within the limit of time above mentioned, the umpire shall be appointed by agreement between the members for the time being of the Supreme Court of the United States and the members for the time being of the Judicial Committee of the Privy Council in Great Britain each nominating body acting by a majority. [In case they shall fail to agree upon an umpire within three months of the date of an application made to them in that behalf by the high contracting parties or either of them, the umpire shall be selected in the manner provided for in Art. X.]

The [person] *umpire* so selected shall be the president of the tribunal and the award of the majority of the members thereof shall be final.

Art. IV

All pecuniary claims or groups of pecuniary claims which shall exceed £100,000 in amount and all other matters in difference, in respect of which either of the high contracting parties shall have rights against the other under treaty or otherwise, provided that such matters in difference do not involve the determination of territorial claims, shall be dealt with and decided by an arbitral tribunal, constituted as provided in the next following article.

Art. V

Any subject of arbitration described in Art. IV shall be submitted to [the] *a*[2] Tribunal provided for by Art. III, the award of which tribunal, if unanimous, shall be final. If not unanimous either of the high contracting parties may within six months from the date of the award demand a review thereof. In such case the matter in controversy shall be submitted to an arbitral tribunal consisting of five jurists of repute, no one of whom shall have been a member of the tribunal whose award is to be reviewed and who shall be selected *for each such case*[2] as follows, viz: — [two by each of the high contracting parties and, one to act as umpire, by the four thus nominated and to be chosen within three months after the date of their nomination] *two by her Majesty the Queen of the United Kingdom of Great Britain and Ireland, two to be nominated by the President of the United States, and appointed by and with the advice and consent of the Senate, and one to act as umpire to be chosen by the four thus nominated within three months after the date of their nomination.* In case they shall fail to choose

[1] "In each case submitted" added by the Senate.

[2] By the Senate.

an umpire within the limit of time above-mentioned, the umpire shall be appointed by agreement between the nominating bodies designated in Art. III acting in the manner therein provided. [In case they shall fail to agree upon an umpire within three months of the date of an application made to them in that behalf by the high contracting parties or either of them, the umpire shall be selected in the manner provided for in Art. X.]

The [person] *umpire* so selected shall be the president of the tribunal and the award of the majority of the members thereof shall be final.

Art. VI

Any controversy which shall involve the determination of territorial claims shall be submitted to a tribunal composed of six members three of whom [(subject to the provisions of Art. VIII)][1] shall be [judges of the Supreme Court of the United States or justices of the Circuit Courts] *jurists of repute*, to be nominated by the President of the United States *in each case*[2] *and appointed by and with the advice and consent of the Senate*, and the other three of whom, [(subject to the provisions of Art. VIII)][3] shall be judges of the British Supreme Court of Judicature or members of the Judicial Committee of the Privy Council to be nominated by her Britannic Majesty, whose award by a majority of not less than five to one shall be final. In case of an award made by less than the prescribed majority, the award shall also be final unless either power shall, within three months after the award has been reported protest that the same is erroneous, in which case the award shall be of no validity.

In the event of an award made by less than the prescribed majority and protested as above provided, or if the members of the arbitral tribunal shall be equally divided, there shall be no recourse to hostile measures of any description until the mediation of one or more friendly powers has been invited by one or both of the high contracting parties.

Art. VII

Objections to the jurisdiction of an arbitral tribunal constituted under this treaty shall not be taken except as provided in this article.

If before the close of the hearing upon a claim submitted to an arbitral tribunal constituted under Art. III or Art. V either of the high contracting parties shall move such tribunal to decide, and thereupon [it] *any one of the arbitrators appointed by either of the high contracting parties*[4] shall

[1] Elided by the Senate.

[2] Added by the Senate.

[3] Elided by the Senate.

[4] Alteration by the Senate.

decide that the determination of such claim necessarily involves the decision of a disputed question of principle of grave general importance affecting the national rights of such party as distinguished from the private rights whereof it is merely the international representative, the jurisdiction of such arbitral tribunal over such claim shall cease and the same shall be dealt with by arbitration under Art. VI.

[Art. VIII][1]

[In cases where the question involved is one which concerns a particular state or territory of the United States, it shall be open to the President of the United States to appoint *by and with the advice and consent of the Senate*, a judicial officer of such state or territory to be one of the arbitrators under Art. III or Art. V or Art. VI.

[In like manner in cases where the question involved is one which concerns a British colony or possession, it shall be open to her Britannic Majesty to appoint a judicial officer of such colony or possession to be one of the arbitrators under Art. III or Art. V or Art. VI.]

Art. IX

Territorial claims in this treaty shall include all claims to territory and all claims involving questions of servitudes, rights of navigation and of access, fisheries and all rights and interests necessary to the control and enjoyment of the territory claimed by either of the high contracting parties.

[Art. X]

[If in any case the nominating bodies designated in Arts. III and V shall fail to agree upon an umpire in accordance with the provisions of the said articles, the umpire shall be appointed by his Majesty the King of Sweden and Norway.

[Either of the high contracting parties, however, may at any time give notice to the other that, by reason of material changes in conditions as existing at the date of this treaty, it is of opinion that a substitute for his Majesty should be chosen either for all cases to arise under the treaty or for a particular specified case already arisen, and thereupon the high contracting parties shall at once proceed to agree upon such substitute to act either in all cases to arise under the treaty or in the particular case specified as may be indicated by said notice; provided, however, that such notice shall have no effect upon an arbitration already begun by the constitution of an arbitral tribunal under Art. III.

[The high contracting parties shall also at once proceed to nominate a substitute for his Majesty in the event that his Majesty shall at any

[1] Article elided by the Senate.

time notify them of his desire to be relieved from the functions graciously accepted by him under this treaty either for all cases to arise thereunder or for any particular specified case already arisen.] [1]

8. ROOSEVELT'S FAILURE, 1905

The revival of interest in arbitration created by the signing of the British-French treaty of October 14, 1903, resulted in the convening of the second American Conference on International Arbitration at Washington on January 12, 1904. Some of the most prominent citizens participated in the conference, which passed a resolution calling upon the Government to proceed with the negotiation of arbitration treaties.

The negotiation of such treaties was the last constructive activity of John Hay in the office of secretary of state. In the negotiations he was carrying out the direct instructions of President Theodore Roosevelt, who had first adverted to the subject in his annual message to Congress of December 9, 1903: [2]

There seems good ground for the belief that there has been a real growth among the civilized nations of a sentiment which will permit a gradual substitution of other methods than the method of war in the settlement of disputes. It is not pretended that as yet we are near a position in which it will be possible wholly to prevent war, or that a just regard for national interest and honor will in all cases permit of the settlement of international disputes by arbitration; but by a mixture of prudence and firmness with wisdom we think it is possible to do away with much of the provocation and excuse for war, and at least in many cases to substitute some other and more rational method for the settlement of disputes. The Hague court offers so good an example of what can be done in the direction of such settlement that it should be encouraged in every way.

Invitation to Governments

About the time of President Roosevelt's message the text of the British-French treaty was submitted to every member of the Senate Committee on Foreign Relations. Republicans on the committee encouraged the Administration to go forward. Senator Morgan of Alabama was alone in not approving. [3] With this

[1] Arts. XI–XV completing the treaty are purely formal and were the subject of no changes.

[2] *Messages and Papers of the Presidents*, p. 6869.

[3] Boston *Evening Transcript*, February 11, 1905, p. 1.

forecast of the Senate's attitude in hand, Secretary Hay on October 20, 1904, issued an invitation to the Governments signatory to the Hague convention of 1899 to enter into such treaties. After quoting from the President's message of 1903, the circular letter said:[1]

> Moved by these views, the President has charged me to instruct you to ascertain whether the Government to which you are accredited, which he has reason to believe is equally desirous of advancing the principle of international arbitration, is willing to conclude with the Government of the United States an arbitration treaty of like tenor to the arrangement concluded between France and Great Britain, on October 14, 1903.
>
> I inclose herewith a copy of both the English and French texts of that arrangement. Should the response to your inquiry be favorable, you will request the Government to authorize its minister at Washington to sign the treaty with such plenipotentiary on the part of the United States as the President may be pleased to empower for the purpose.

In his annual message of December 6, 1904, the President further said:[2]

> We are in every way endeavoring to help on, with cordial good will, every movement which will tend to bring us into more friendly relations with the rest of mankind. In pursuance of this policy I shall shortly lay before the Senate treaties of arbitration with all powers which are willing to enter into these treaties with us. It is not possible at this period of the world's development to agree to arbitrate all matters, but there are many matters of possible difference between us and other nations which can be thus arbitrated.

Simultaneously a series of treaties identic in text was being signed with the following states: France, November 1, 1904; Switzerland, November 21, 1904; Germany, November 22, 1904; Portugal, November 23, 1904; Great Britain, December 12, 1904; Italy, December 14, 1904; Austria-Hungary, January 6, 1905; Mexico, January 18, 1905; Sweden and Norway, February 11, 1905; Spain, February 11, 1905; Japan, February 11, 1905.

The treaties were reported to the Senate from the Committee on Foreign Relations on February 8, 1905, and by a vote of 50 to 9, with 31 not voting, on February 11 the Senate advised and

[1] *Foreign Relations*, 1904, p. 8–9.

[2] *Messages and Papers*, p. 7053.

consented to ratification of the French treaty as amended.[1] The amendment consisted of substituting the word "treaty" for the word "agreement" in Art. II, which as signed read:

In each individual case the high contracting parties before appealing to the Permanent Court of Arbitration, shall conclude a special agreement defining clearly the matter in dispute and the scope of the powers of the arbitrators and fixing the periods for the formation of the arbitral tribunal and the several stages of the procedure.

President Roosevelt's Attitude

The amendment had been discussed for some time. Senator Henry Cabot Lodge, probably both as a result of his personal disposition and of the feeling in the Senate, had evidently urged it on the President. In the Roosevelt-Lodge letters as published there is no reference by Mr. Lodge to the treaties, but there is a vigorous statement in a letter of President Roosevelt to him dated as early as January 6, 1905. In that letter the President said to his friend:[2]

I am much more concerned about the arbitration treaties [than Canadian reciprocity treaties]. Thinking over the matter and talking with Moody and Taft to-day, it seems to me that the amendment providing that the Senate shall ratify any of the agreements entered into under these arbitration treaties is much more objectionable than the amendment proposed by the southerners, and cuts the heart out of the treaty. In fact, I think that this amendment makes the treaties shams, and my present impression is that we had better abandon the whole business rather than give the impression of trickiness and insincerity which would be produced by solemnly promulgating a sham. The amendment, in effect, is to make any one of these so-called arbitration treaties solemnly enact that there shall be another arbitration treaty whenever the two Governments decide that there shall be one. Of course it is mere nonsense to have a treaty which does nothing but say, what there is no power of enforcing, that whenever we choose there shall be another arbitration treaty. We could have these further special arbitration treaties in special cases whenever desired just exactly as well if there were no general arbitration treaty at all. Now, as far as I am concerned, I wish either to take part in something that means something or else not to have any part in it at all. During the campaign last sum-

[1] Vote on Executive I, 58th Cong., 3d sess., *Cong. Record*, 39, p. 2477.

[2] *Selections from the Correspondence of Theodore Roosevelt and Henry Cabot Lodge*, 1884–1918, II, p. 111–112.

mer I announced and Hay announced that we were negotiating these treaties with the various countries concerned. Our party speakers on the stump made a great deal of it, and now I believe that the people generally approve of what has been done. If they do not approve, and if their representatives object to providing the exceedingly small measure of arbitration which these treaties actually provide, then let them be beaten. But for Heaven's sake do not let us take part in a sham and be pretending to do something that we do not really do. If these arbitration treaties are ratified the President will be bound by the supreme law of the land not to submit to arbitration anything that is of vital concern to the honor or interest of the country. He could be impeached if he transgressed this law. The fear that he would transgress it is in my judgment utterly chimerical, and in any event has no greater warrant than the fear that he will in any other way violate the law of the land and run the risk of impeachment.

In any event, if there is this fear as to what the President will do, then the objection to all general arbitration treaties is fundamental; and it is unpardonable, under such circumstances, ever to have undertaken to negotiate them or to have sanctioned such negotiation. In such case we must be relegated to making arbitration treaties on each separate subject that comes up; and if this is the fact, then a general arbitration treaty is nonsense and ought not to be gone into.

My present feeling is that I should like to have a clear-cut issue as to whether we are or are not to take this very short but real step toward settling international difficulties by arbitration, and that if we are not to take it I should prefer to withdraw the treaties and simply say that the temper of the Senate is hostile to arbitration.

In any event I think we should avoid above everything the suspicion that we are acting insincerely or trickily, or only with an eye for political effect and making believe to pass an arbitration treaty which in reality amounts to nothing.

Always yours,

THEODORE ROOSEVELT.

CAUSES OF OPPOSITION

The Administration continued to be disturbed by the Senate's attitude. On February 3, Secretary of State John Hay set down in his diary:[1]

The President spent an hour with me in the afternoon. He was deeply disturbed about the state of the treaties in the Senate, not so much at the opposition of the Democrats as at the nerveless acquiescence of our people in every attack that is made upon them. Knox

[1] William Roscoe Thayer, *The Life and Letters of John Hay*, II, p. 392.

and Spooner now take the ground that every separate agreement to arbitrate, under these treaties, must be submitted to the Senate: if this provision is incorporated it leaves us exactly where we are now.

The press accounts at the time indicated that the usual political pressure was being employed by the Administration to line up the Republicans. The tactics were employed where feasible with Democrats. Of the four Democrats on the Committee on Foreign Relations, Senator James B McCreary of Kentucky, who 16 years before had fathered the resolution which brought about the International American Conference of 1889–90, was alone in favor of the treaties. Of the other three, who provided leadership for the opposition, Robert Lincoln O'Brien, Washington correspondent of the Boston *Evening Transcript*, a Republican newspaper, wrote in a dispatch of February 1, 1905:

> The real reasons that these senators are against the arbitration treaties are not dissimilar to those that defeated the arbitration treaty which Mr. Olney negotiated in the last Democratic Administration. Many men think the suggestion of arbitration is pusillanimous; that the more heroic part is to stand in a defiant attitude toward the world and that this is what constituents will most applaud. The anti-English hostility, which is always active in this country, asserted itself affirmatively when the old arbitration treaty was before the Senate and carried the day to real glory. It is asserting itself now by indirection, using the southern bond argument as its chief vehicle. An additional reason is the chronic disposition of the senators who are leading in this fight to put the Administration into a hole.

The Extremist Minority Report

The minority report[1] on the treaties was signed by John T. Morgan of Alabama, one of the leaders of the opposition to the 1897 American-British treaty, and Hernando D. Money of Mississippi.

The report, which extended to some 28 pages, started from the assumption that the Hague convention of 1899 for the pacific settlement of international disputes, which had been ratified by the President on April 7, 1900, was sufficient and that it was "a national impropriety to enter into special agreements."[2]

[1] Sen. Doc. No. 115, 58th Cong., 3d sess., *Cong. Docs.*, Vol. 4765.

[2] Report, p. 3.

This argument was elaborated at great length. The 1899 convention was, of course, not contemplated as either a complete or an exclusive system, though that was not specifically stated in it. The Morgan-Money argument was obliterated two years after it was made by a definite provision in the revision of the Hague convention in 1907 in Art. 40, by which the United States with the other contractants, reserved "to themselves the right of concluding new agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it."

The minority Senators used as one of the bases of their argumentation the Pan American treaty for the arbitration of pecuniary claims (signed at Mexico City, January 30, 1902, and advised and consented to by the Senate on January 11, 1905), overlooking that it was as improper to make that treaty as it was those under discussion.

The Senators, disregarding both that the series of treaties under consideration was only a beginning and that one of them was with Mexico, argued that the treaties were a discourtesy to Pan America and alleged that they would be resented there.

They made much of the assertion that this "plan of emasculating the Hague convention" [1] was being carried out with European states. "The treaty between France and Great Britain . . . seems to fulfill its purpose as an alliance between those powers . . . That treaty is the basis of the conventions now before the Senate, all of which were proposed to other powers by the United States . . . And the United States and those leading powers are making no effort to extend the movement to the American republics." [2]

The "occult purpose" of this move was "a daring grasp of imperial power through the decisions of a judicial tribunal created by emperors," and therefore it was something "that a republic should resent rather than embrace." [3]

The treaty provided for the exclusion of the interests of "third parties" from arbitration. The minority Senators concluded that the American republics, which at that time were not signatories to the Hague convention, were not to be regarded as third parties. From this conclusion it was assumed that the interests

[1] P. 17. [2] P. 10–11. [3] P. 13.

of American republics might be affected with impunity by the operation of the treaties.

All the foregoing arguments fell on sterile soil in 1905. But the authors of the minority report also stated the general senatorial objection to the text. According to them, the framers of the Constitution "required the Senate to review every treaty negotiated by the Executive, and itself to decide what would be its effect upon the 'honor,' 'vital interests' or 'independence' of the country . . . They are the very questions which under the pending treaty are left to the determination of the Executive alone." [1]

What really most concerned the Senate was thus expressed: [2]

> The firm grasp upon our relations with foreign governments, placed in the hands of a minority of one-third of the Senate by the Constitution, whereby entangling alliances and wars have been often prevented, and our national independence and individuality have been preserved, is being relaxed and the people are losing that power of self-protection. It is silently passing from the hands of their representatives . . . into the sole and exclusive power of the President. . . .
>
> Such is the effect that must result from the conventions now before the Senate and, so far as can be seen, that is one of the real intents and purposes intended to be accomplished by their ratification. . . .
>
> This fatal door in these conventions, through which the rightful powers of the Senate will pass into the hands of the Executive, should be closed so that a mere diplomatic agreement concluded by the President can not bind the Government of the United States and all the states and all the people to obey it as the supreme law of the United States. Our Government will become a true autocracy when the President is invested with this power.

President Roosevelt's Letter

With this report before the Senate and the temper of that body pretty obvious, President Roosevelt after lengthy deliberation decided to try and affect the issue by his personal intervention. At the least, he sought to make the issue definite. He accordingly sent the following letter to Senator Shelby M. Cullom, chairman of the Committee on Foreign Relations, who was in charge of the treaty: [3]

[1] Report, p. 9.

[2] Report, p. 11, 18.

[3] Boston *Evening Transcript*, February 11, 1905; collated by the Roosevelt Memorial Association.

White House, Washington, D. C.,
February 10, 1905.

My dear Senator Cullom: — I learn that the Senate Committee on Foreign Relations has reported the arbitration treaties to the Senate, amending them by substituting for the word "agreement" in the second article the word "treaty". The effect of the amendment is to make it no longer possible, as between its contracting parties, to submit any matter whatever to arbitration without first obtaining a special treaty to cover the case. This will present not a step forward but a step backward. If the word "agreement" were retained, it would be possible for the Department of State to do as, for instance, it has already done under the Hague treaty in the Pious Fund arbitration case with Mexico, and submit to arbitration such subordinate matters as by treaty the Senate had decided could be left to the Executive to submit under jurisdiction limited by the general treaty of arbitration.

If the word "treaty" be substituted, the result is that every such agreement must be submitted to the Senate; and these general arbitration treaties would then cease to be such and indeed, in their amended form they amount to a specific pronouncement against the whole principle of a general arbitration treaty.

The Senate has, of course, the absolute right to reject or to amend in any way it sees fit any treaty laid before it, and it is clearly the duty of the Senate to take any step which, in the exercise of its best judgment, it deems to be for the interest of the nation. If, however, in the judgment of the President, a given amendment nullifies a proposed treaty, it seems to me that it is no less clearly his duty to refrain from endeavoring to secure a ratification, by the other contracting power or powers, of the amended treaty; and, after much thought, I have come to the conclusion that I ought to write and tell you that such is my judgment in this case.

As amended we would have a treaty of arbitration which in effect will do nothing but recite that this Government will, when it deems it wise, hereafter enter into treaties of arbitration. Inasmuch as we of course now have the power to enter into any treaties of arbitration, and inasmuch as to pass these amended treaties does not in the smallest degree facilitate settlements by arbitration, to make them would in no way further the cause of international peace. It would not in my judgment, be wise or expedient to try to secure the assent of the other contracting powers to the amended treaties, for even if such assent were secured we should still remain precisely where we were before save where the situation may be changed a little for the worse. There would not even be the slight benefit that might obtain from the mere general statement that we intend hereafter, when we can come to an agreement with foreign powers as to what shall be submitted, to enter into arbitration treaties;

for we have already, when we ratified the Hague treaty with the various signatory powers, solemnly declared such to be our intention; and nothing is gained by reiterating our adherence to the principle while refusing to provide any means of making our intention effective. In amended form the treaties contain nothing except such expression of barren intention, and, indeed, as compared with what has already been provided for in the Hague arbitration treaty, they probably represent not a step forward but a slight step backward as regards the question of international arbitration. As such I do not think that they should receive the sanction of this Government. Personally it is not my opinion that this Government lacks the power to enter into general treaties of arbitration, but if I am in error, and if this Government has no power to enter into such general treaties, then it seems to me that it is better not to attempt to make them, rather than to make the attempt in such shape that they shall accomplish literally nothing whatever when made.

Sincerely yours,

THEODORE ROOSEVELT.

Hon. S. M. CULLOM,
Chairman Committee on Foreign Relations,
United States Senate.

The next day the Senate failed to follow the advice of the President; and as already stated, advised and consented to the ratification of the French treaty amended by the substitution of "treaty" for "agreement" in Art. II.

9. THE 1908–09 SERIES OF TREATIES

Notwithstanding his strong language in 1905, President Roosevelt consented three years later to the renegotiation of the treaties in terms meeting the Senate condition. The first of these treaties was that signed on February 10, 1908, with France. They are all in the same terms, embodying in Art. II a provision which was acceptable to the Senate. The first signed read:

ARTICLE I. Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention of July 29, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting states, and do not concern the interests of third parties.

ART. II. In each individual case the high contracting parties, before appealing to the Permanent Court of Arbitration, shall conclude a special agreement defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the arbitral tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate, and on the part of France they will be subject to the procedure required by the constitutional laws of France.

ART. III. The present convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; it shall become effective on the day of such ratification, and shall remain in force for a period of five years thereafter.

Done in duplicate in the English and French languages, at Washington, this tenth day of February, in the year 1908.

ELIHU ROOT (Seal)
JUSSERAND (Seal)

At the time these treaties were hailed as a considerable accomplishment. Several arbitrations have been held under them, in each case under a special agreement acted upon by the Senate.

The treaties were made for the most part for a five-year period. Out of 25 treaties negotiated, three never went into effect. Of the 22 originally in force, 11 have been allowed to lapse.[1] No statements have been made respecting the treaties which have been allowed to lapse, but in some instances conditions at the time seem to have affected the decision to permit the engagements to go out of existence. The Swedish treaty lapsed in 1918, and an identic one was made to succeed it in 1924. The same text was negotiated with Liberia in 1926. The following table gives in brief the history of the series of treaties:

[1] The treaties with Costa Rica and Salvador provided for automatic extension, but exchanges of notes extending them for five years had the effect of bringing them to an end at the expiration of that additional period.

	Signed.	Ratifications exchanged.	Extended for Five Years.	Extended for Five Years.	Extended for Five Years.	In Force.
Argentina	Dec. 23, 1908	Not consummated	–	–	–	–
Austria-Hungary	Jan. 15, 1909	May 13, 1909	May 6, 1914	Expired May 28, 1919		–
Bolivia	Jan. 7, 1909	Not consummated	–	–	–	–
Brazil	Jan. 23, 1909	July 26, 1911	Automatic extension for 5 year periods			until denounced
Chile	Jan. 13, 1909	Not consummated	–	–	–	–
China	Oct. 8, 1908	Apr. 6, 1909	Expired April 6, 1914		–	–
Costa Rica	Jan. 13, 1909	July 20, 1909	Mar. 16, 1914	Expired July 20, 1919		–
Denmark	May 18, 1908	Mar. 29, 1909	Expired Mar. 29, 1914		–	–
Ecuador	Jan. 7, 1909	June 22, 1910	Automatic extension, terminable on one year's notice			until denounced
France	Feb. 10, 1908	Mar. 12, 1908	Feb. 13, 1913	Feb. 27, 1918	July 19, 1923	Feb. 27, 1928
Great Britain	Apr. 4, 1908	June 4, 1908	May 31, 1913	June 3, 1918	June 23, 1923	June 4, 1928
Haiti	Jan. 9, 1909	Nov. 15, 1909	Automatic extension, terminable on one year's notice			until denounced
Italy	Mar. 28, 1908	Jan. 22, 1909	May 28, 1913	Mar. 20, 1919	Expired Jan. 22, 1924	–
Japan	May 5, 1908	Aug. 24, 1908	June 28, 1913	Aug. 23, 1918	Aug. 23, 1923	Aug. 24, 1928
Liberia	Feb. 10, 1926	Sept. 27, 1926	–	–	–	Sept. 27, 1931
Mexico	Mar. 24, 1908	June 27, 1908	Expired June 27, 1913		–	–
Netherlands	May 2, 1908	Mar. 25, 1909	May 9, 1914	Mar. 8, 1919	Feb. 13, 1924	Mar. 25, 1929
Norway	Apr. 4, 1908	June 24, 1908	June 16, 1913	Mar. 30, 1918	Nov. 26, 1923	June 24, 1928
Paraguay	Mar. 13, 1909	Oct. 2, 1909	Expired Oct. 2, 1914[1]		–	–
Peru	Dec. 5, 1908	June 29, 1909	Automatic extension, terminable on one year's notice			until denounced
Portugal	Apr. 6, 1908	Nov. 14, 1908	June 28, 1913	Sept. 14, 1920	Sept. 5, 1923	Nov. 14, 1928
Salvador	Dec. 21, 1908	July 3, 1909	May 13, 1914	Expired July 3, 1919		–
Spain	Apr. 20, 1908	June 2, 1908	May 29, 1913	Mar. 8, 1919	Expired June 2, 1923	–
Sweden	May 2, 1908	Aug. 18, 1908	June 28, 1913	Expired Aug. 18, 1918		–
Sweden	June 24, 1924	Mar. 18, 1925	–	–	–	Mar. 18, 1930
Switzerland	Feb. 29, 1908	Dec. 23, 1908	Nov. 3, 1913	Expired Dec. 23, 1918		–
Uruguay	Jan. 9, 1909	Nov. 14, 1913	Automatic extension, terminable on one year's notice			until denounced

[1] An agreement for extension signed Mar. 2, 1914, did not become effective (Exec. A, 63d Cong., 2d sess.).

10. PRESIDENT TAFT'S EFFORT, 1911–12

At a dinner given to President Taft in New York by the International Arbitration and Peace League on March 22, 1910, he said:

> Personally I do not see any reason why matters of national honor should not be referred to courts of arbitration as matters of private or national property are. I know that is going further than most men are willing to go, but I do not see why questions of honor should not be submitted to tribunals composed of men of honor who understand questions of national honor, to abide by their decision as well as in other questions of difference arising between nations.

The American Society for Judicial Settlement of International Disputes held its first meeting in Washington, December 15–17, 1910. President Taft spoke at the closing banquet, and in the course of his address said:[1]

> If now we can negotiate and put through private agreements with some other nation to abide the adjudication of International Arbitration Courts in every issue which can not be settled by negotiations, no matter what it involves, whether honor, territory or money, we shall have made a long step forward by demonstrating that it is possible for two nations at least to establish between them the same system which, through the process of law, has existed between individuals under government.

On March 13, 1911, Sir Edward Grey, British secretary of state for foreign affairs, in a debate on the navy estimates spoke in the House of Commons, and in the course of the speech he said:[2]

> I can conceive of but one thing that will really affect this military and naval expenditure of the world on the wholesale scale in which it must be affected if there is to be a real and sure relief. You will not get it till nations do what individuals have done, come to regard an appeal to the law as the natural course for nations, instead of an appeal to force. Public opinion has been moving. Arbitration has been increasing. But you must take a large step further before the increase of arbitration will really affect this expenditure on armaments. I should perhaps have

[1] *Proceedings of International Conference* under the auspices of American Society for Judicial Settlement of International Disputes, December 15–17, 1910, p. 353.

[2] Parl. Debates, 5th series, 22, cols. 1988–90.

thought that I was not spending the time of the House profitably in asking the House to look to arbitration as something which could really touch this great expenditure had it not been that twice within the last twelve months, in March and December, the President of the United States has sketched out a step in advance in arbitration more momentous than anything that any practical statesman in his position has ventured to say before — pregnant with consequences and very far-reaching.

After reading the President's statements he continued:

These are bold and courageous words. We have no proposal before us, and unless public opinion will rise to the level of discussing a proposal of that kind not with reference to charges of inconsistency, not with reference to what one nation or the other is going to gain by some agreement, but unless they rise to the height of discussing as a great movement in the opinion of the world, it can not be carried out. But supposing it took place, and two of the greatest nations in the world were to make it clear to the whole world that by agreement such as that, that in no circumstances were they going to war again, I venture to say that the effect on the world at large of the example would be one which would be bound to have beneficial consequences. It is true that the two nations . . . might still be exposed to attack from a third nation who had not entered into such agreement. I think it would probably lead to their following it up by an agreement that they would join with each other in any case in which one only had a quarrel with a third power by which arbitration was refused. And more and more the tendency which is growing in the world to recognize that war between two great countries must not only be a serious thing for them but must be a serious thing for neutral powers through the disturbance it causes, the more and more . . . nations would come to the conclusion as between themselves, that they were not going to fight, but that it was their interest to join together to keep the peace of the world.

I have spoken of that because I do not think that a statement of that kind put forward by a man in the position of the President of the United States should go without response. Entering into an agreement of that kind there would be great risks entailed. If you agree to refer everything to arbitration as the President of the United States has said, you must be prepared to take certain risks. You must be prepared for some sacrifices of national pride. An agreement of that kind, so sweeping as that, if proposed to us, we should be delighted to have such a proposal, but I should feel it was something so momentous and so far-reaching in its possible consequences that it would require not only the signature of both Governments, but the deliberate and deciding sanction of Parliament. That, I believe, would be obtained.

Justiciable Questions

Negotiations went forward with France and Great Britain during the summer of 1911, and on August 3 identic treaties were signed with those states which were intended to be models for a series. The text then developed was an advance in arbitral technique, effected by the relatively obvious procedure of specifying the type of question to be arbitrated, which was defined as justiciable, and remitting all other questions to a commission of inquiry. The principle has received continuous application throughout the world since the war and basically is embodied in the Locarno and all other treaties of advanced character which have been negotiated since 1924. The treaties read:[1]

Article I. All differences hereafter arising between the high contracting parties, which it has not been possible to adjust by diplomacy, relating to international matters in which the high contracting parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the convention of October 18, 1907, or to some other arbitral tribunal, as *shall* [may] be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define the scope of the powers of the arbitrators, the question or questions at issue, and settle the terms of reference and the procedure thereunder.

The provisions of Arts. 37 to 90, inclusive, of the convention for the pacific settlement of international disputes concluded at the Second Peace Conference at The Hague on October 18, 1907, so far as applicable, and unless they are inconsistent with or modified by the provisions of the special agreement to be concluded in each case, and excepting Arts. 53 and 54 of such convention, shall govern the arbitration proceedings to be taken under this treaty.

The special agreement in each case shall be made on the part of the United States by the President of the United States, by and with the advice and consent of the Senate thereof, and on the part of France subject to the procedure required by the constitutional laws of France.

Such agreements shall be binding when confirmed by the two Governments by an exchange of notes.

Art. II. The high contracting parties further agree to institute as occasion arises, and as hereinafter provided, a joint high commission of inquiry to which, upon the request of either party, shall be referred for

[1] 62d Cong., 2d sess., Sen. Doc. No. 476, reprinting Exec. I; *Cong. Docs.*, Vol. 6176.

impartial and conscientious investigation any controversy between the parties within the scope of Art. I, before such controversy has been submitted to arbitration, and also any other controversy hereafter arising between them even if they are not agreed that it falls within the scope of Art. I; provided, however, that such reference may be postponed until the expiration of one year after the date of the formal request therefor, in order to afford an opportunity for diplomatic discussion and adjustment of the questions in controversy, if either party desires such postponement.

Whenever a question or matter of difference is referred to the joint high commission of inquiry, as herein provided, each of the high contracting parties shall designate three of its nationals to act as members of the commission of inquiry for the purposes of such reference; or the commission may be otherwise constituted in any particular case by the terms of reference, the membership of the commission and the terms of reference to be determined in each case by an exchange of notes.

The provisions of Arts. 9 to 36, inclusive, of the convention for the pacific settlement of international disputes concluded at The Hague on October 18, 1907, so far as applicable and unless they are inconsistent with the provisions of this treaty, or are modified by the terms of reference agreed upon in any particular case, shall govern the organization and procedure of the commission.

Art. III. The joint high commission of inquiry, instituted in each case as provided for in Art. II, is authorized to examine into and report upon the particular questions or matters referred to it, for the purpose of facilitating the solution of disputes by elucidating the facts, and to define the issues presented by such questions, and also to include in its report such recommendations and conclusions as may be appropriate.

The reports of the commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or on the law, and shall in no way have the character of an arbitral award.

It is further agreed, however, that in cases in which the parties disagree as to whether or not a difference is subject to arbitration under Art I of this treaty, that question shall be submitted to the joint high commission of inquiry; and if all or all but one of the members of the commission agree and report that such difference is within the scope of Art. I, it shall be referred to arbitration in accordance with the provisions of this treaty.

Art. IV. The commission shall have power to administer oaths to witnesses and take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty; and the high contracting parties agree to adopt such legislation as may be appropriate and necessary to give the commission the powers above mentioned, and to provide for the issue of subpœnas and for compelling the attendance of witnesses in the proceedings before the commission.

On the inquiry both sides must be heard, and each party is entitled to appoint an agent, whose duty it shall be to represent his Government before the commission and to present to the commission, either personally or through counsel retained for that purpose, such evidence and arguments as he may deem necessary and appropriate for the information of the commission.

Art. V. The commission shall meet whenever called upon to make an examination and report under the terms of this treaty, and the commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction of the two Governments. Each commissioner, upon the first joint meeting of the commission after his appointment, shall, before proceeding with the work of the commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the commission.

The United States and French sections of the commission may each appoint a secretary, and these shall act as joint secretaries of the commission at its joint sessions, and the commission may employ experts and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the commission and of the agents and counsel and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the commission incurred by it shall be paid in equal moieties by the high contracting parties.

Art. VI. This treaty shall supersede the arbitration treaty concluded between the high contracting parties on February 10, 1908.

Art. VII. The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the President of the French Republic, in accordance with the constitutional laws of France. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange of its ratifications. It shall thereafter remain in force continuously unless and until terminated by twelve months' written notice given by either high contracting party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate in the English and French languages and have hereunto affixed their seals.

Done at Washington and Paris this third day of August, one thousand nine hundred and eleven.

(Seal.) Philander C. Knox.
(Seal.) Jusserand.

President Led Public Debate

The two treaties were transmitted to the Senate which, in view of the active public interest concerning them, removed the injunction of secrecy on August 5. According to practice the Committee on Foreign Relations considered them and presented a majority report by Mr. Lodge to the Senate on August 15. On August 21 Senators Root, Cullom and Burton presented a minority report. Subsequently, Senator Burton made a supplementary minority report, and still later Senator Rayner submitted views favorable to the treaty. The first session of the 62d Congress closed on August 22. The second session opened on December 4 and debate in open executive session extended from January 4 to March 7, 1912.

The circumstance that the reports made in August were before the country for several months before the discussion began in the Senate offered an excellent opportunity for developing public opinion on the question of the treaties. As always in a matter relating to a treaty text, the fears aroused and the dangers assumed were more effectively presented than the advantages of the document.

Even before the signing of the treaties the campaign concerning them had begun. President Taft practically went on the stump. Among the notable addresses for them which he delivered were those in Boston before the American Bar Association on August 3; before the Methodist camp-meeting at Ocean Grove, N. J., August 15; at a convention of the Veterans of the G. A. R. at Rochester, N. Y., on August 23; and at the Connecticut State Fair, Hartford, on September 7. The general attitude which he assumed may be illustrated by a quotation from his address on August 15 in which he said:

> We can not make omelets without breaking eggs; we can not submit international questions to arbitration without the prospect of losing; and if arbitration is to be effective, and is to cover the ground that shall really promote the cause of peace and prevent war, it must cover questions of the utmost interest to both countries. If the subject of arbitration is merely for discussion in peace societies and is only for the purpose of furnishing a text for an address like that I am delivering to you, and if the result is not to mean real victory for one party and real defeat for the other, certainly the time of diplomatic officers, who have many other

things to do, ought not to be wasted on it. I am very serious in my advocacy of arbitration as a means of settling international disputes, and I believe that you are. I am willing to abide an adverse decision in a court of arbitration for my own country, even though it may impose a serious loss upon her, if the system of arbitration is to be made permanent and the court is of such a character that when I have a just cause I can count on receiving a just judgment. If we are going into the arbitration game, if I may call it such, we must play it through to the end, and we must take our hard knocks with equanimity, as we expect others to take theirs, with the hope and knowledge that the disadvantages that may accrue to each party can never equal the horrible losses of war.

Objections in Committee Report

In the Senate the majority report of the committee of August 15 was presented by Senator Lodge.[1] If the treaties stopped with Art. 1 "defining the scope of the subjects to be submitted to arbitration, the committee would have found no difficulty in recommending to the Senate its immediate ratification." The scope "was very large and general and somewhat indeterminate," but "no question could be dealt with unless the treaty-making powers of both countries were agreed that it was justiciable within the meaning of the article." Moreover, "by reserving the power to pass upon all special agreements each party to the contract reserves at the same time the power to reject as not justiciable any of these questions which it is admitted no nation could submit to an outside judgment without abandoning its sovereignty and independence."

"These treaties, however, do not stop with the article which defines and enlarges the scope of arbitration." The last clause of Art. III, which departed "widely from the Hague provisions," was singled out. By it the commission was invested with the function of deciding whether a "difference is subject to arbitration under Art. I." If this commission should so decide, the question "must then go to arbitration whether the treaty-making power of either country believes it to be justiciable or not."

A special agreement coming to the Senate after the joint commission had so decided "could not be amended or rejected by the Senate on the ground that in their opinion the question was not justiciable and did not come within the scope of Art. I. By this

[1] 62d Cong., 1st sess., Sen. Doc. No. 98; *Cong. Docs.*, Vol. 6108. This was reprinted to contain the minority reports.

clause the constitutional powers of the Senate are taken away *pro tanto* and are transferred to a commission, upon the composition of which the Senate has no control whatever." It was only the more serious if the President's powers are equally affected. But he could choose the commission, and it would be bad faith "to defeat an adverse decision in advance" by arranging the membership of the joint commission.

The majority of the committee began its main criticism from the premise "that each and every part of the treaty must receive the consent of two-thirds of the Senate. . . . The most vital question in every proposed arbitration is whether the difference is arbitrable. For instance, if another nation should do something to which we object under the Monroe doctrine . . . , the vital point would be whether our right to insist upon the Monroe doctrine was subject to arbitration. and if the third clause of Art. III remains in the treaty the Senate could be debarred from passing upon that question." Questions of immigration and of territorial integrity. national and state, were matters which "no nation on earth could think of raising," but which the treaty "in certain contingencies rather invited other nations to raise" and "to endeavor to force them before an arbitral tribunal. Such an invitation would be a breeder of war and not of peace, and would rouse a series of disputes, now happily and entirely at rest, into malign and dangerous activity."

The fact that "we must make like treaties in precisely the same terms with any other friendly power" only "adds to the gravity of the action now to be taken."

Root and Colleagues Oppose Majority

Senators Root, Cullom and Burton in their minority report reasoned against these contentions. The settlement of the question whether a particular case fell within the matters which we have agreed to arbitrate "is not delegating to the commission power to say what shall be arbitrated." The commission is merely empowered to "find whether the particular case is one that the President and Senate have said shall be arbitrated. Provisions of this kind are very common in our statutes."

The minority said that "it is true that there are some questions of national policy and conduct which no nation can submit to the

decision of anyone else, just as there are some questions of personal conduct which every man must decide for himself."

"The real objection" of the majority, said the minority, was "that the commission under the general language of the first article, may draw the line to suit themselves instead of observing a line drawn by the treaty-making power." The objection could be met without amendment by "following a practice for which there is abundant precedent, and making the construction of the treaty certain by a clause in the resolution" of the Senate. The clause suggested was "that the treaty does not authorize the submission to arbitration of any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, or other purely governmental policy."

Senator Burton in his supplemental views quoted the international authority, John Bassett Moore, and insisted that the last clause of Art. III "does not deprive the Senate of any constitutional right, and furthermore that the proposed treaties are quite the reverse of unwise and perilous."

Senate Debates Changes

Senator Root presented the motion of the minority on August 21, 1911. On the same day Senator Augustus O. Bacon of Georgia presented a series of amendments to the Root resolution reminiscent of the senatorial changes made to the 1897 treaty.

Senator Lodge, for the committee, on January 11, 1912, presented a resolution which did not insist upon the majority contention of striking out treaty text but which was confined to providing that any submission under Art. III should be subject to the advice and consent of the Senate.

The proceedings in the Senate were in open executive session. Beginning with January 16, the debate continued intermittently until the vote on March 7. An address favoring the treaties delivered by Secretary of State Knox on November 8, 1911, was printed as a Senate document on February 8, 1912, and, being regarded as an official gloss to the treaties, was largely used as the basis of the support.[1] Senators Elihu Root and John Sharp Williams took especially prominent parts in support

[1] "Pending Arbitration Treaties," Sen. Doc. No. 298, 62d Cong., 2d. sess.; *Cong. Docs.*, Vol. 6175.

of the documents. As usual, the opponents found it advantageous to lengthen the debate, but eventually it was agreed to vote at a given date, March 5.

On February 29 Senator Lodge offered the resolution originally presented on January 11 with a minor modification. On March 4 Senator William Alden Smith of Michigan gave notice of an amendment to the committee resolution, to strike out the third paragraph of Art. III. In the voting on March 7 (legislative day, March 5) this amendment was passed by a vote of 42 to 40. Senator Charles A. Culberson of Texas next offered an amendment to Art. I, according to which questions affecting vital interests, independence or national honor were to be excepted.

Secretary of State Knox in the address referred to had characterized them as loose phrases "of wide and varied general meaning which are not judicially definable and mean whatever the particular nation involved declares them to mean."[1] The correctness of this characterization had been much debated and the Culberson amendment was defeated by a vote of 37 to 45.

Senator Bacon proposed an amendment to Art. I excepting questions affecting the admission of aliens, territorial integrity, state indebtedness, etc., which was lost on a tie vote of 41 to 41. Senator George E. Chamberlain of Oregon next offered an amendment to Art. I barring from arbitration questions affecting the admission of aliens, which was agreed to, 41 to 38.

The proceedings shifted from the Committee of the Whole to the Senate where Senator Lodge offered a resolution embodying the amendments made. Senator Bacon proposed his amendment, previously lost on a tie, and this was agreed to, 46 to 36. The resolution so modified was put to a vote and was passed, 76 to 3. The same resolution was adopted for the French treaty. The text of the treaties as amended and passed by the Senate was issued as a Senate document.[2]

With the exception of two minor linguistic changes, the treaties passed the Senate with the third paragraph of Art. III stricken out and with the following reservation added:[2]

Provided, That the Senate advises and consents to the ratification of the said treaty with the understanding, to be made part of such ratifica-

[1] Sen. Doc. No. 298, p. 11.

[2] Sen. Doc. No. 476, 62d Cong., 2d sess.; *Cong. Docs.*, Vol. 6176.

tion, that the treaty does not authorize the submission to arbitration of any question which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several states, or the territorial integrity of the several states or of the United States, or concerning the question of the alleged indebtedness or monied obligation of any state of the United States, or any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe doctrine, or other purely governmental policy.

President Taft in his message of December 3, 1912, made only a casual reference to the failure of the treaties, stating that the Government "to my regret was unable to consummate two arbitration treaties which set the highest mark of the aspiration of nations toward the substitution of arbitration and reason for war in the settlement of international disputes." Later, however, he was much more specific. After he had ceased to be President, he addressed the World Court Congress at Cleveland, Ohio, on May 12, 1915, and referred to these treaties "which the Senate rejected or so mutilated as to destroy their vital principle."[1] In an address at Montclair, N. J., on December 30, 1918, he was still more definite and said that, when the treaties got to the Senate, "that august body truncated them and amended them and qualified them in such a way that their own father could not recognize them . . . Since the treaties had really been framed as models, when they came back thus crippled and maimed, they were not very useful. So I put them on the shelf and let the dust accumulate on them in the hope that the Senators might change their minds, or that the people might change the Senate; instead of which they changed me."[2]

11. TREATIES FOR ADVANCEMENT OF PEACE, 1913–14

William Jennings Bryan became Secretary of State on March 5, 1913. On April 23, he met members of the Senate Committee on Foreign Relations to consider with them a project which had been discussed and approved by the President. On April 24 the

[1] *Taft Papers on League of Nations*, edited by Theodore Marburg and Horace E. Flack (New York, The Macmillan Co., 1920), p. 43.

[2] *Taft Papers on League of Nations*, p. 178, 179. *Cf.* The President's Address at Concord, N. H., Mar. 19, 1912, p. 7–9 (Sen. Doc. No. 552, 62d Cong., 2d sess.; *Cong. Docs.*, Vol. 6176).

secretary of state invited the 36 representatives of foreign Governments accredited to the United States Government to meet him. By direction of President Wilson, he laid before them a plan for the promotion of peace. The formal proposal embodied in his statement read:

> The parties hereto agree that all questions of whatever character and nature, in dispute between them, shall, when diplomatic efforts fail, be submitted for investigation and report to an international commission (the composition to be agreed upon); and the contracting parties agree not to declare war or begin hostilities until such investigation is made and report submitted.
>
> The investigation shall be conducted as a matter of course upon the initiative of the commission, without the formality of a request from either party; the report shall be submitted within (time to be agreed upon) from the date of the submission of the dispute, but the parties hereto reserve the right to act independently on the subject matter in dispute after the report is submitted.

"The President's object is to hasten universal peace" by supplementing arbitration treaties which "contain certain exceptions" from that method. The period of investigation to be fixed "will enable the parties to the controversy to separate questions of fact from questions of national honor and reach some amicable adjustment of their differences." After the lapse of the specified period nations are "at liberty to settle their differences with the sword, but it is believed that . . . this agreement when entered into will make war between the contracting parties a remote possibility." Details were left to future negotiation, but the secretary mentioned that the original draft presented to the Senate committee contained a suggestion "that the period of investigation should not be utilized for a change in the naval program of the contracting nations." [1]

On July 7, when 20 states had accepted the proposal in principle, the secretary of state issued a supplementary memorandum dealing with certain details. On August 12, September 23 and December 18 further notes were sent and the negotiation and signing of the treaties was already proceeding apace. In the end 35 states accepted the plan in principle and 30 treaties were negotiated.

[1] *Foreign Relations*, 1913, p. 8 and 9.

The 30 treaties signed differ somewhat in text but essentially follow the lines of the first to enter into force:

The United States of America and the Republic of Guatemala, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose and to that end have appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Guatemala, Señor Don Joaquin Méndez, Envoy Extraordinary and Minister Plenipotentiary of Guatemala to the United States;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon the following articles:

Article I. The high contracting parties agree that all disputes between them, of every nature whatsoever, which diplomacy shall fail to adjust, shall be submitted for investigation and report to an International Commission, to be constituted in the manner prescribed in the next succeeding Article; and they agree not to declare war or begin hostilities during such investigation and report.[1]

Art. II. The International Commission shall be composed of five members, to be appointed as follows: One member shall be chosen from each country, by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments. The expenses of the Commission shall be paid by the two Governments in equal proportion.

The International Commission shall be appointed within four months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

Art. III. In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the International Commission for investigation and report. The International Commission may, however, act upon its own initiative, and in such case it shall notify both Governments and request their cooperation in the investigation.

[1] Another form of this article which has been employed frequently is as follows:

"The high contracting parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent International Commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted."

The report of the International Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each Government, and the third retained by the Commission for its files.

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the Commission shall have been submitted.

Art. IV. The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Republic of Guatemala, with the approval of the Congress thereof; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years· and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Washington on the 20th day of September, in the year of our Lord nineteen hundred and thirteen.

Senate Action

The treaties came to a vote in the Senate on August 13, 1914.[1] Only 50 senators were present. The treaty with Norway, signed June 24, 1914, was the first to be considered. The Committee on Foreign Relations had reported the text as signed to the Committee of the Whole.

Senator Cummins of Iowa proposed a series of four amendments of phraseology intended to emphasize further the limitation of the text to the investigation of facts in controversy. The amendments were defeated 13 to 36. Senator Thomas of Colorado moved to amend Art. II by adding the clause "they further agree that pending such investigation and report such dispute shall remain in *status quo*," a motion defeated 5 to 45. Senator Cummins failed in an effort to amend the constitution of the commission so that it would consist of three nationals of each party.

Mr. Poindexter of Washington moved to amend Art. I so that there would be submitted to investigation only "all disputes not

[1] The executive proceedings are digested from *Cong. Rec.*, 59, pt. 4, p. 3693.

involving the Monroe doctrine or other questions of settled national policy or the vital interests or the national honor of either of the high contracting parties." This was defeated on a record vote of 10 to 35. As the total number voting was less than the quorum, 48, a question arose as to whether the vote was valid. It was decided to be valid by reason of the fact that four senators present were paired so that they could not vote.

The treaty was then reported to the Senate in which Senator Swanson submitted the resolution of ratification, to which Senator Jones of Washington submitted the following addition:

Provided, That the Senate advises and consents to the ratification of said treaty with the understanding, to be made part of such ratification, that the treaty does not authorize the submission to or investigation by said international commission of any question which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several states or the territorial integrity of the several states or of the United States, or concerning the question of the alleged indebtedness or monied obligation of any state of the United States, or any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe doctrine, or other purely governmental policy.

This amendment was not agreed to, and the resolution was then passed 44 to 5, Senators William E. Borah of Idaho, Joseph L. Bristow of Kansas, Albert B. Fall of New Mexico, Wesley L. Jones of Washington and Miles Poindexter of Washington voting in the negative.

The treaty with the Netherlands, signed November 18, 1913, was next up, and a vote of 36 to 4 was recorded. This not being a quorum the roll was called, when 50 senators answered to their names. The resolution of ratification being again up, the vote was 48 to 0. Senator Jones being present and excused from voting, the Vice President declared a quorum to be present, and the resolution passed.

The closeness of the vote raised a question some years later, the record showing Senator Reed of Missouri in the affirmative. Senator Reed declared on March 1, 1920, in a colloquy with Senator Walsh of Montana that he "consistently opposed the Bryan treaties." He said, however, "that a point was reached

where it was perfectly manifest that the Senate was going to ratify them, and objection became absolutely useless." Though Senator Reed declared that the record was in error, Senator Walsh pointed out "that it took 49 votes to make a quorum, and if the senator from Missouri had not been here, it would have been impossible on that occasion at least to ratify the treaty."[1]

It is, of course, impossible to state what vote the treaties would have had if a larger number of senators had participated in the voting. Senator Lodge, at the time ranking minority member of the Committee on Foreign Relations, is on record in a letter of January 20, 1915, to Theodore Roosevelt, referring to the latter's article in the current *Metropolitan* on the Colombia treaty, as having said:[2]

> Nothing can be truer than your main theme of the folly, if not wickedness, of making treaties which have no force and no intention of enforcement behind them. I was away last summer when those fatuous treaties were put through by Bryan. If I had been here, I should have resisted them.

In the subsequent proceedings on August 13 the Senate passed in quick succession the treaties with Portugal, Switzerland, Denmark, Italy, Salvador, Guatemala, Honduras, Nicaragua, Bolivia, Persia, Costa Rica, Venezuela, Uruguay, Argentina, Brazil and Chile. Not all passed without change. A perfecting amendment was adopted to Art. I, making the treaties applicable to questions to which "previous arbitration treaties or agreements do not apply in their terms or are not applied in fact." This clause was added to the treaties with Denmark, Italy, Salvador, Uruguay, Argentina, Brazil and Chile on that day.

In the treaties with Salvador, Guatemala, Honduras, Nicaragua and Persia there appeared an Art. IV phrased as follows:

> Pending the investigation and report of the International Commission, the high contracting parties agree not to increase their military or naval programs, unless danger from a third power should compel such increase, in which case the party feeling itself menaced shall confidentially com-

[1] *Cong. Rec.*, 59, p. 3697.

[2] *Selections from the Correspondence of Theodore Roosevelt and Henry Cabot Lodge*, 1884–1918, II, p. 452–53.

municate the fact in writing to the other contracting party, whereupon the latter shall also be released from its obligation to maintain its military and naval *status quo.*

The Committee on Foreign Relations proposed to each of these treaties an amendment striking out this text and renumbering the article following. This was done without debate.

Permanent Commission

The treaties represented an advance in the American practice of pacific settlement in respect to the provision as to their periodicity. Instead of being negotiated for a single period of five years, each treaty provided that it should continue in force beyond that period until notice of an intention to terminate it had been given. As a consequence, the question of renewal has not been added to the routine of the Department of State.

An important feature of these treaties for the advancement of peace was their provision for a commission continuously in being to which reference of a question might be made without the formality of choosing individuals to serve at the time when the dispute is rife. The existence of such treaties may modify the attitude of governments in the daily differences that arise between them so that they are less likely to push an issue to a point where it becomes a *casus fœderis.* It is, therefore, normal to expect that such treaties will not be frequently used by states willing to make them in the first instance. A large part of their value comes from the circumstance that they exist and are in working order.

Of the 21 treaties of this type which the United States has in force, only those with China, Denmark, France, Great Britain, Guatemala, Italy, Portugal, Russia, Spain and Sweden have ever been in working order, and, owing to failure to fill vacancies caused by death of commissioners, only three (with Denmark, Portugal and Sweden) have been in working order for several years.

In the early days of the series the parties to the treaties in a number of instances found it impractical to carry out on time the provision that the commissioners should be appointed within a period of four or six months. Technical violation of this provision was obviated by exchanges of notes establishing a further

period for appointments in the cases of China, France, Great Britain, Guatemala, Italy, Norway, Paraguay, Portugal, Spain and Sweden. The last of those exchanges, which was the second such exchange with Guatemala, was dated June 1, 1916.

Since that time there seems to have been little effort to fill vacancies resulting from death of commissioners and practically no new replacement appointments have been made. The commissions are each stipulated to be composed of five persons. The treaties in force and the status of the commission under each as given by the Department of State on June 19, 1926, are listed:[1]

[1] The text of treaties in force will be found in *Treaties, Conventions* . . . 1910–1923, and of all signed in Carnegie Endowment for International Peace, *Treaties for the Advancement of Peace* (New York, 1920).

Country.	Signed.	In Force from Exchange of Ratifications.	Commissioners. On the Part of United States (2). (No. 1 in each column is a national and No. 2 nonnational.)	On the Part of Other State (2).	Joint Appointee (1).
Bolivia . .	Jan. 22, 1914	Jan. 8, 1915	1. Adolphus R. Talbot 2.	1. Severo F. Alonzo, former President 2. – –[1]	1.
Brazil . .	July 24, 1914	Oct. 28, 1916	1. 2.	1. 2.	1.
Chile . .	July 24, 1914	Jan. 19, 1916	1. 2.	1. 2.	1.
China . .	Sept. 15, 1914	Oct. 22, 1915	1. – –[2] 2. H. J. Horst (Norway)	1. V. K. Wellington Koo 2. Henri de Codt (Fr.)	1. K. H. L. Hammarskjöld (Sweden)
Costa Rica .	Feb. 13, 1914	Nov. 12, 1914	1. – –[3] 2.	1. 2.	1.
Denmark .	Apr. 17, 1914[4]	Jan. 19, 1915	1. Judson Harmon 2. Ricardo Aldao[5] (Arg.)	1. Erik Trolle[6] 2. P. J. Jorgensen[7] (Dan.)	1. J. Loudon (Dutch)
Ecuador .	Oct. 13, 1914	Jan. 22, 1916	1. 2.	1. 2.	1.
France . .	Sept. 15, 1914	Jan. 22, 1915	1. – –[8] 2. Rómulo S. Naón (Arg.)	1. – –[9] 2. Carton de Wiart (Belg.)	1. J. Loudon (Dutch)
Great Britain .	Sept. 15, 1914	Nov. 10, 1914	1. – –[10] 2. – –[11]	1. – –[12] 2. Alexandre Millerand (Fr.)[13]	1. Fridtjof Nansen (Nor.)
Guatemala .	Sept. 20, 1913	Oct. 13, 1914	1. – –[14] 2. Paul Ritter (Switz.)	1. José Pinto 2. – –[15]	1. J. Loudon (Dutch)

Honduras .	Nov. 13, 1913	July 27, 1916	1. 2.	1. 2.	1.
Italy . .	May 5, 1914	Mar. 19, 1915	1. George L. MacKintosh 2. – –[16]	1. – –[17] 2. M. van Iseghen (Belg.)	1. G. W. W. Gram (Nor.)
Norway . .	June 24, 1914	Oct. 21, 1924	1. J. B. Scott 2.	1. Jørgen Løvland 2.	1.
Paraguay .	Aug. 29, 1914	Mar. 9, 1915	1. – –[18] 2. Constantin Brun (Den.)	1. 2.	1.
Peru . .	July 14, 1914	Mar. 4, 1915	1. Eugene Wambaugh[19] 2.	1. Anselmo Barreto 2. J. Z. de San Martin (Uru.)	1.

[1] Santiago Perez Triana (Colombian) died May 26, 1916.
[2] Cleveland H. Dodge declined to serve; Andrew D. White of New York, appointed Aug. 14, 1916, died Nov. 4, 1918.
[3] James B. McCreary of Kentucky died Oct. 8, 1918.
[4] Redraft of treaty signed Feb. 5, 1914, which failed to pass the Danish Senate.
[5] Succeeded José Carlos Rodrigues of Brazil, died in 1923.
[6] Succeeded J. H. Deuntzer, died in November, 1918.
[7] Succeeded Carl Valdemar Kraft.
[8] Richard Olney of Massachusetts died April 9, 1917.
[9] Louis Renault (French) died February 8, 1918.
[10] George Gray of Delaware died August 7, 1925.
[11] Domicio da Gama (Brazilian), deceased.
[12] Viscount Bryce died January 22, 1922 (alternative commissioners named for Canada, Australia, New Zealand and Newfoundland survive; the alternate for South Africa has died).
[13] Succeeded Maxim Kovaleski (Russian), deceased.
[14] William J. Stone of Missouri died April 14, 1918.
[15] Domicio da Gama (Brazilian), deceased.
[16] Eduardo Suárez-Mujica (Chile), deceased.
[17] Baron Edmondo Mayor des Planches died December 27, 1920.
[18] W. S. Jennings of Florida died February 27, 1920.
[19] Resignation of October 22, 1916, not formally accepted.

Country.	Signed.	In Force from Exchange of Ratifications.	Commissioners. On the Part of United States (2). (No. 1 in each column is a national and No. 2 nonnational.)	On the Part of Other State (2).	Joint Appointee (1).
Portugal	Feb. 4, 1914	Oct. 24, 1914	1. James M. Cox 2. Sir R. L. Borden (Can.)	1. Barbosa de Magalhães 2. Sanchez Toca (Spain)	1. Lauro S. Muller (Bra.)[1]
Russia	Oct. 1, 1914	Mar. 22, 1915	1. E. A. Alderman[2] 2. C. R. Crane[2]	1. M. Timacheff[2] 2. Baron Nolde[2]	1. – –[3]
Spain	Sept. 15, 1914	Dec. 21, 1914	1. – –[4] 2. Ignacio Calderon (Bol.)	1. Pio de Gullon Yglesias 2. Pablo Speisser (Switz.)	1. J. Loudon (Dutch)
Sweden	Oct. 13, 1914	Jan. 11, 1914	1. Samuel Avery 2. Gabriel Hanotaux[5] (France)	1. Joannes Hellner 2. F. V. N. Beichmann[6] (Nor.)	1. Max Huber[7] (Switz.)
Uruguay	July 20, 1914	Feb. 24, 1915	1. Harry B. Hutchins 2.	1. 2.	1.
Venezuela	Mar. 21, 1914	Feb. 12, 1921	1. 2.	1. 2.	1.

[1] Lauro S. Muller (Brazilian), died *circa* August 1, 1926.
[2] The United States has not recognized the Government of the Soviet Union which succeeded the Government to which these commissioners were acceptable.
[3] G. F. Hagerup (Nor.), deceased.
[4] Cyrus Northrop of Minnesota died April 3, 1922.
[5] Succeeded Paul Benjamin d'Estournelles de Constant (French), died May 15, 1924.
[6] Succeeded G. F. Hagerup (Nor.), deceased.
[7] Succeeded J. A. Loeff (Dutch), deceased.

Treaties not in Force

The following seven treaties of the series negotiated were advised and consented to by the Senate but are not in force by reason of not having been ratified by the other parties:

Argentine Republic — Signed at Washington, July 24, 1914; ratification advised by United States Senate, August 13, 1914.

Greece — Signed at Washington, October 13, 1914; ratification advised by United States Senate, October 20, 1914.

Netherlands — Signed at Washington, December 18, 1913; ratification advised by United States Senate, August 13, 1914.

Nicaragua — Signed at Washington, December 17, 1913; ratification advised by United States Senate, August 13, 1914.

Persia — Signed at Teheran, February 4, 1914; ratification advised by United States Senate, August 13, 1914.

Salvador — Signed at Washington, August 7, 1913; ratification advised by United States Senate, August 13, 1914.

Switzerland — Signed at Washington, February 13, 1914; ratification advised by United States Senate, August 13, 1914.

Treaties were negotiated with the Dominican Republic and Panama and signed respectively on February 17, 1914, and September 20, 1913. The Senate has never acted upon them.

Finally, Austria-Hungary, Belgium, Cuba, Germany and Haiti accepted the proposal in principle, but no treaties were ever negotiated or signed with those states.

The attitude of Germany toward these treaties excited some interest at the time and subsequently. The proposal was submitted to Germany through diplomatic channels on April 24, 1913, and the Berlin Government was the twelfth to accept in principle.

The matter did not go beyond that point. The negotiation of the treaties went on steadily, and by May, 1914, fifteen of them had been signed. On June 1, 1914, Edward M. House, representing the President, had an audience with the Kaiser in which European peace was the principal subject of discussion. In his diary record of the interview Mr. House states:[1]

I forgot to say that I asked the Kaiser why Germany refused to sign the "Bryan treaty" providing for arbitration and a "cooling-off period" of a year before hostilities could be inaugurated.

[1] Charles Seymour, *Intimate Papers of Colonel House*, 1, p. 256.

He replied: "Germany will never sign such a treaty. Our strength lies in being always prepared for war at a second's notice. We will not resign that advantage and give our enemies time to prepare."

Six weeks after the beginning of the World War Germany and her ally, Austria-Hungary, were invited on September 15, 1914, to begin the negotiation of such treaties. No reply to this invitation is of record.[1]

12. CENTRAL AMERICAN COURT OF JUSTICE, 1916

Costa Rica, Guatemala, Honduras, Nicaragua and Salvador, the five states of Central America, are so closely allied in history and culture that they began independent existence with an effort at federation, which has never ceased to play an important part in their relations. The history of Central America from 1824 to 1921 is almost a continuous account of attempts at federation punctuated by disunion.[2]

An especially determined effort to accomplish union began at Corinto, Nicaragua, in 1902. The ensuing Central American treaty of peace of November 2, 1903, and the proclamation guaranteeing the peace of Central America of August 20, 1904, developed important principles.[3]

In 1906 trouble was threatening between Guatemala and Salvador. On July 13 President Roosevelt undertook a form of mediation simultaneously with President Díaz of Mexico, offering the U. S. S. *Marblehead* as a neutral place of conference. An understanding was reached and a conference to complete the arrangement began the following September 15 at San José, Costa Rica, with all Central American states represented except Nicaragua. Several agreements were made, and special attention was given to the development of methods of cooperation, including an international bureau and a pedagogical institute.

At that time Guatemala was not in the Corinto system and Nicaragua was out of the San José system. The former provided that all disputes should be submitted to Central American

[1] Letter for the Secretary of State, May 27, 1926, DP 763. 72119/12270.

[2] For a sketch of projects of union see the *New Pan Americanism*, Part III, Appendix III, and p. 114–128, and for the covenant of union of Central America of January 19, 1921, League of Nations *Treaty Series*, V, p. 10.

[3] See *Foreign Relations*, 1902, p. 882; 1904, p. 351, and *British and Foreign State Papers*, 97, p. 694, for the texts.

arbitration; the latter that they should be submitted to American-Mexican arbitration. A brewing revolution in Honduras resulted in an argument with Nicaragua as to Honduran exiles in Nicaragua. Nicaragua demanded a Corinto arbitration, which collapsed because it refused to disband its troops. Honduras then denounced the Corinto treaty, and Secretary of State Root suggested that the disputants act under the San José treaty. Both Honduras and Nicaragua accepted the American-Mexican good offices thus tendered.

Central American Peace Conference

Further events led up to the convening of the Central American peace conference at Washington on November 13, 1907, under the joint auspices of the United States and Mexico. In that conference the documents of the past five years were made into an extensive system of pacification under the guiding hand of American-Mexican representatives. The resulting documents were seven in number: A general treaty of peace and amity, a convention creating the Central American Court of Justice, conventions on extradition, the development of common interests, creating a pedagogical institute, establishing annual conferences of the five states and for the development of a railroad system.

The Central American Court of Justice consisted of one judge from each state, and all five states under the convention bound themselves to submit to it "all controversies or questions which may arise among them, of whatsoever nature and no matter what their origin may be, in case the respective departments of foreign affairs should not have been able to reach an understanding." Its installation took place on May 25, 1908, at Cartago, Costa Rica, for a 10-year period.

In 1908 it came to the attention of the United States that Nicaragua was willing to dispose of the Isthmian Canal route across that country to non-American interests.[1] Disturbances in Nicaragua had resulted in the establishment of a detachment of the U. S. Marine Corps at Managua on August 4, 1912. The United States on February 8, 1913, signed a treaty with Nicaragua by which the United States was to have a perpetual and exclusive grant of the Nicaraguan Canal route, was to lease certain islands

[1] George T. Weitzel, *American Policy in Nicaragua*, 9–10, 64th Cong., 1st sess., Sen. Doc. No. 334; *Cong. Docs.*, Vol. 6952.

in the Gulf of Mexico, and secure a naval station on the Pacific side in the Gulf of Fonseca. The American administration changed on March 4, 1913. Secretary of State Bryan signed a revised treaty with the Nicaraguan representative on August 5, 1914, and this treaty entered into force as from June 24, 1916.

For historical reasons, Costa Rica claimed that the canal route which Nicaragua had granted to the United States violated its treaty rights on the San Juan River, which forms part of the boundary between Costa Rica and Nicaragua and was included in the canal route. Salvador held that the Gulf of Fonseca was a conventional condominium of Honduras, Nicaragua and Salvador and that as a consequence Nicaragua was legally incapable of alienating any part of it independently of the other two, and above all of introducing a fourth state into an occupation of its littoral. The two disputes thus resulting from the Bryan-Chamorro treaty were brought before the Central American Court of Justice. The court rendered a decision favorable to Costa Rica on September 30, 1916, and on March 9, 1917, decided the second case favorably to Salvador.

Decisions of the Court

The court found that Nicaragua had "violated to the injury of Costa Rica" the boundary treaty between those states of April 15, 1853, the arbitral award of President Cleveland of March 22, 1888, and the Central American treaty of peace and amity of December 20, 1907. The court made no declaration on the Costa Rican prayer to declare the Bryan-Chamorro treaty null and void. While Art. I of that treaty "grants in perpetuity" to the United States proprietary rights necessary for an interoceanic canal, a reservation attached by the United States Senate to it declared that "nothing in the convention is intended to affect any existing right of Costa Rica, Salvador and Honduras." As the main purpose of the provision was to prevent any other state from competing with the Panama Canal, no effort has been made to execute the treaty provision. Respecting Salvador, the court found that Art. II of the Bryan-Chamorro treaty granting to the United States the right to establish, operate and maintain a naval base on the Nicaraguan littoral of the Gulf of Fonseca "menaces the national security" of Salvador, that it "violates

Arts. II and IX of" the 1907 treaty, and that Niearagua was "under the obligation . . . to reestablish and maintain" the prior legal status.

The position of Nicaragua was obviously awkward. The court had found its treaty engagements with the United States at variance with its other treaty engagements and under a general treaty negotiated under the auspiees of the United States. Whieh-ever way it turned Nicaragua must violate something. In view of the importanee of the questions to both Costa Riea and Salvador it was unlikely that negotiations by Nicaragua with them would materially eontribute to a solution. They might have approaehed the United States, or the United States might have approaehed either of them. Costa Riea, Niearagua, Salvador and the United States might have attempted to get together. Another possibility would have been the negotiation of protoeols between the three Governments and the United States taking cognizanee of the deeisions of the court. None of these possible lines of aetion was taken.

Court Expires by Limitation

In Central Ameriea it was felt that failure of the United States to take cognizance in any way of the opinions of the court defeated the end for which the eourt was created and rendered its eontinuanee impossible. The only move for preserving the court seems to have been through the Carnegie Endowment for International Peaee. The report of its Division of International Law for 1918 in referring to the faets reeorded an opinion "that the United States eould not afford to aeeept a benefit under sueh eireumstances, that it should regard and aeeept the award of the eourt and advise Niearagua to do the same, and take sueh action in the premises as was necessary to adjust the difficulty. The direetor, upon reeeiving an informal request from the Department of State that the Endowment . . . assist in preserving the eourt from threatened dissolution by the refusal of the eontracting states to renew the convention," seeured an authorization to take the matter up with the soeieties of international law of the countries eoneerned. In the eommunieation sent as a result on Mareh 1, 1918, the officers of the Ameriean Institute of International Law stated that "we have reasonable eause to believe

that the Government of the United States is also greatly interested in the maintenance of the said court, and that it will bow to its resolutions."[1] No state concerned seems to have acted on this initiative. This international court came to an end on the expiration of its first conventional term as a consequence of the circumstances narrated.

The Central American peace system established in 1907 included, as the titles of the conventions cited indicate, more than the court. The whole expired with the court. However, the Central American states immediately after the close of the World War tended again to draw closer. The result was a covenant of union of Central America signed January 19, 1921, to which, however, Nicaragua did not become a party and which did not really become operative.

Conference on Central American Affairs

Previous interest of the United States in bringing the Central American states together and allegations that its action and influence had not contributed to this end resulted in negotiations to improve the situation, and eventually a conference on Central American affairs was held at Washington from December 4, 1922, to February 7, 1923. The Government of the United States accepted an invitation to be represented at the conference, which drew up 12 treaties and conventions and three protocols. These were a general treaty of peace and amity and conventions for the establishment of an International Central American Tribunal, for the establishment of international commissions of inquiry, the establishment of free trade, the unification of protective laws for workmen and laborers, on the practice of the liberal professions, on the preparation of projects of electoral legislation, on the establishment of stations for agricultural experiments and animal industries, on reciprocal exchange of Central American students, extradition convention, establishment of permanent Central American commissions on finance and means of communication, and on the limitation of armaments.[2]

The general treaty among other things binds the governments not to recognize a government coming into power through a

[1] Carnegie Endowment for International Peace, *Yearbook, 1918*, p. 119, 178.

[2] For texts see *International Conciliation*, Bulletin No. 189.

coup d'état or revolution, and also provides for nonintervention in case of civil war. The convention for the limitation of armaments specifies the number of men which may be maintained in the standing army and national guard. The conventions on specific subjects are in some cases reenactments of earlier agreements, and all are intended to create a common body of law for the Central American states which will contribute toward the maintenance of peace between them.

The new International Central American Tribunal is scarcely comparable with the court which ceased to exist in 1918. It follows the model of the Permanent Court of Arbitration rather than that of the Permanent Court of International Justice. Each of the five states designates six persons, of whom four shall be nationals, and one of the other two chosen from a list submitted by the Government of the United States and one from a list submitted by the government of a Latin American state designated by the contractant. The 30 jurists thus selected form a panel to whom will be submitted cases arising between the contracting parties, which are to be defined in a special agreement. The arbitrators shall be three in number, one selected by each party to the controversy from those placed on the list by other states. The third arbitrator shall be selected at will and by common accord by the interested governments.

To a tribunal thus constituted, and whose procedure is provided for in detail, the Central American states agree to submit "all controversies or questions which now exist between them or which may hereafter arise, whatever their nature or origin," in the event that they have not made other arrangements for their pacific settlement. "Nevertheless, the questions or controversies which affect the sovereignty and independent existence of any of the signatory republics can not be the object of arbitration or complaint." The latter clause expresses textually the contention of Nicaragua (April 16, 1917) that the Central American Court of Justice was incompetent in the Salvador case.

The United States became a party to a protocol by which it agreed to designate 15 of its citizens who might be called upon to serve in the tribunals.

Another convention of the conference dealt with pacific settlement. The United States became a party to this convention for

the establishment of international commissions of inquiry, because of a desire to "unify and recast" into a single convention the treaties for the advancement of peace which had been concluded between it and the Governments of Costa Rica, Guatemala, Honduras, Nicaragua [1] and Salvador. [1]

The text of the convention is, however, in sharp contrast to that of the treaties, which provided for a commission of inquiry upon "all disputes . . . of every nature whatsoever." Art. I of the 1923 convention excepts from consideration by the commission the categories which have been excepted from American treaties of arbitration and which were characterized by Secretary of State Knox as meaning "whatever the particular nation involved declares them to mean." This was the more noticeable, because the treaties themselves are further restricted, all being confined to investigation "regarding questions of fact," questions of law apparently being contemplated as falling within the jurisdiction of the Central American tribunal so far as the five Central American states only are concerned.

In order to show the difference between the scope of this convention and the treaties for the advancement of peace the first paragraph of Art. I of the convention is quoted:

> When two or more of the contracting parties shall have failed to adjust satisfactorily through diplomatic channels a controversy originating in some divergence or difference of opinion regarding questions of fact, relative to failure to comply with the provisions of any of the treaties or conventions existing between them and which affect neither the sovereign and independent existence of any of the signatory republics, nor their honor or vital interests, the parties bind themselves to institute a commission of inquiry with the object of facilitating the settlement of the dispute by means of an impartial inquiry into the facts.

13. CONGRESSIONAL DECLARATION OF POLICY, 1916

Two waves of American opinion were beating in on Congress in the year 1916. One emphasized military preparedness in the face of the World War. The other, recognizing the practical reasons for looking to the national armament, emphasized the dangers of militarism and sought the development of pacific settlement. In fact, the two ideas became merged and a large

[1] The treaties with these states were never in force.

number of members of Congress shared both opinions. In the first session of the 64th Congress a couple of dozen resolutions and bills embodying these two ideas were introduced by members of both the House and the Senate. Probably the joint resolution introduced by Senator James D. Phelan, April 19, 1916, is typical of the sentiment then prevailing. It read:[1]

> That despite the enlargement of the army and navy required by present world conditions, the United States of America reaffirms their faith in the policy of the peaceful settlement of international disputes by all reasonable and honorable means, and declares their desire and intention to welcome such international agreements as will make large or competitive armaments unnecessary.

To a request that this joint resolution be adopted Senator William J. Stone, chairman of the Committee on Foreign Relations, objected on the ground that "we may have a flood of such resolutions" and the texts ought to be collected in committee before action was taken. The proposals increased in number and variation simultaneously with legislative plans to establish a very extensive building program for the navy.

The two points of view mentioned were shared in the House Committee on Naval Affairs, of which Lemuel E. Padgett was chairman. The naval appropriation bill (H. R., 15947) presented to the House a building program which would make the United States the first naval power in the world. But the completion of the program was conditioned upon the realization of methods of pacific settlement. In the report of May 24 accompanying the bill it was said:[2]

> The committee while desirous that the country shall be properly prepared against attack by a foreign foe and fully realizing that the navy is the first line of defense, yet with a sincere hope that upon the conclusion of the present European war some steps might be taken looking to the settlement of international disputes by arbitration and the discontinuance of the construction of competitive armaments, the committee recommends the adoption of the following [declaration].

The debate, chiefly on the building program, kept the measure before Congress several months. The act, approved by the

[1] S. J. Res. 122, *Cong. Rec.*, 53, p. 6418.

[2] 64th Cong., 1st sess., H. Rept. 743, p. 6; *Cong. Docs.*, Vol. 6905.

President on August 29, 1916, established the following as the law of the land:[1]

It is hereby declared to be the policy of the United States to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided. It looks with apprehension and disfavor upon a general increase of armament throughout the world, but it realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable power must maintain a relative standing in military strength.

In view of the premises, the President is authorized and requested to invite, at an appropriate time, not later than the close of the war in Europe, all the great Governments of the world to send representatives to a conference which shall be charged with the duty of formulating a plan for a court of arbitration or other tribunal, to which disputed questions between nations shall be referred to adjudication and peaceful settlement, and to consider the question of disarmament and submit their recommendation to their respective Governments for approval. The President is hereby authorized to appoint nine citizens of the United States, who, in his judgment, shall be qualified for the mission by eminence in the law and by devotion to the cause of peace, to be representatives of the United States in such a conference. The President shall fix the compensation of said representatives, and such secretaries and other employees as may be needed. Two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated and set aside and placed at the disposal of the President to carry into effect the provisions of this paragraph.

If at any time before the construction authorized by this Act shall have been contracted for there shall have been established, with the cooperation of the United States of America, an international tribunal or tribunals competent to secure peaceful determinations of all international disputes, and which shall render unnecessary the maintenance of competitive armaments, then and in that case such naval expenditures as may be inconsistent with the engagements made in the establishment of such tribunal or tribunals may be suspended, when so ordered by the President of the United States.

[1] 39 Statutes at Large, 618.

IV. POSTWAR DEVELOPMENT

The outbreak of the World War demonstrated clearly the inadequacy of existing forms of pacific settlement, and the necessity of devising more reliable methods of insuring world peace.

It was ex-President Taft who first gave public voice to the program upon which effort thereafter centered. Speaking at Cleveland, Ohio, on May 12, 1915, he proposed a peace league embodying four principles[1] developed by a group which had been studying the situation with him for some time. On the initiative of that group a meeting was held in Philadelphia on June 17, 1915, at which the League to Enforce Peace was organized with a program which eventually took the following form:

1. All justiciable questions arising between the signatory powers, not settled by negotiation, shall, subject to the limitations of treaties, be submitted to a judicial tribunal for hearing and judgment, both upon the merits and upon any issue as to its jurisdiction of the question.

2. All other questions arising between the signatories and not settled by negotiation, shall be submitted to a council of conciliation for hearing, consideration and recommendation.

3. The signatory powers shall jointly use forthwith both their economic and military forces against any one of their number that goes to war, or commits acts of hostility, against another of the signatories before any question arising shall be submitted as provided in the foregoing.

4. Conferences between the signatory powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern in the decisions of the judicial tribunal mentioned in Art. 1.

"Enforce" Peace

A word may be said here about the third plank of this platform and the word "enforce" in the title of the organization. The platform was put forward not as an academic exercise in political science but as an attempt to face actual conditions, which were dominated by the fact of the World War then in progress. To set up a system of pacific settlement for all questions except those about which states wished to fight seemed not to be very useful. In the presence of the World War the leaders were pro-

[1] *Taft Papers on League of Nations*, p. 42.

foundly convinced that an attempt to exorcise force by assuming that it would not be called into play was futile. Their essential conception was that the common interest was peace and that to place force, so long as it existed, back of the peace machinery was an advance, and a taming of force itself.

The platform of the League to Enforce Peace secured an immense popular following in the United States and resulted in the organization of societies with the same purposes in many other countries. Groups of more or less strength throughout the world produced programs for peace organization once the war was over, embodying the three principles of judicial settlement, inquiry and conference. It is not too much to say that at the time of the armistice opinion was universally in favor of those methods.[1]

Unanimity was so great on the subject that the official decisions eventually reached required practically no discussion. The Preliminary Peace Conference on January 25, 1919, appointed a Commission on the League of Nations, which had before it projects emanating from the French and Italian Governments and a draft which had been made by the British and American experts, primarily as a revision of a text originating with President Wilson. This British-American draft was adopted as the basis for the commission's work and on the subject of pacific settlement is, with the exception of some details, the same as the articles finally adopted. The Commission on the League of Nations published the text of its findings on February 14, 1919, and its final draft was made public on April 28. In this form, barring drafting changes, the Covenant was incorporated in the treaties of peace as Part I and entered into force on January 10, 1920.[2]

League System of Pacific Settlement

Without disturbing in any way the procedural rules of the 1907 Hague convention, the system of pacific settlement of the League of Nations Covenant creates institutional obligations to make

[1] See especially *Schemes for Maintaining General Peace* by Lord Phillimore (Great Britain Foreign Office, Historical Section, Handbook No. 160). *Cf.* Permanent Court of International Justice, Advisory Committee of Jurists. *Documents Presented to the Committee*, p. 37–89.

[2] *Treaty of Peace with Germany, Hearings*, . . . (Sen. Doc. No. 106, 66th Cong., 1st sess.). The original Wilson proposals are Arts. V–XI, p. 1172–1174; the British-American draft, Arts. IX–XV, p. 1228–1229; the First Report of February 14, Arts. XI–XVII, p. 266–268; draft of April 28, Arts. XI–XVII, p. 272–274.

use of the methods of judicial settlement, arbitration, inquiry and mediation.

Each Member of the League[1] has agreed with all other Members that any dispute likely to lead to a rupture will be submitted to one of the three methods of arbitration (in the strict sense), judicial settlement or inquiry. Each furthermore agrees not to resort to war until three months after the result of the chosen method is known. This is the general agreement. Two points may be mentioned respecting it: It applies the principle of the Wilson-Bryan treaties for the advancement of peace, and it leaves entirely optional to the parties which method is to be chosen. This same flexibility also extends on the part of the differing states to the determination of when a dispute is likely to lead to a rupture, but this is not left completely to their election, since Art. 11 confers upon their fellow-members specific rights of mediation. It should be observed that the engagement is taken with respect to war in its technical sense.

The flexibility of the system is emphasized in the other articles. The Members agree to submit the whole subject matter of a dispute to arbitration or judicial settlement when they recognize these methods as suitable for the purpose. They join each other in declaring that among matters generally suitable for the application of these methods are disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of international obligation, or as to the extent, if any, of the reparation to be made for any such breach.

Choice of Method

In case states do not submit their dispute to arbitration or judicial settlement they agree to submit it to the Council of the League, either party being able to do this without prior agreement with the other disputant. The procedure followed before the Council is both that of inquiry and conciliation. The duty of the Council is "to endeavor to effect a settlement." It is under no obligation to follow any particular rules, and, as a consequence, procedure under the jurisdiction has varied all the way from decisions of judicial character to mutual promises on the

[1] Nonmembers may avail themselves of the League machinery (Art. 17).

part of the disputants. By their agreement the disputants are bound to contribute to the settlement both by the submission of facts and papers and by their presence. By Art. 4 of the Covenant, under which the Council acts, the representative of any Member of the League sits as a member of the Council during the consideration of matters specially affecting its interests. A condition of the Council's effecting a settlement is, therefore, agreement of both parties to the dispute.

It is a matter of mere routine under Art. 15 that all documents and reports of proceedings are published; but if such publication should be questioned, it is, nevertheless, assured. If a settlement is arrived at, the parties will, of course, have no objection to full publication. If such objection should occur in a dispute not settled, the Council can publish by a majority decision.

If the dispute is not settled, but the Council report is unanimous with the exception of the representatives of the disputants, the Members of the League agree not to go to war with the disputant complying with the report. This places the obligation upon both disputants not to act contrary to the report.

If the Council can not reach such a report, the Members of the League have the right to "take such action as they shall consider necessary for the maintenance of right and justice." In other words, there comes a point in the machinery where, the third party having failed to provide a solution for the problem, the parties are free to follow their own devices. War would not occur until after a lapse of three months.

Domestic Jurisdiction

If the question in dispute should lie solely within the domestic jurisdiction of a state as recognized by international law and is so found by the Council, no report shall be made.

A theoretical definition of domestic jurisdiction can not be drawn because the interests of states vary so greatly and their relationships change with each other for many practical reasons. However, the general conditions for determining whether a given case falls within the field of domestic jurisdiction are not so difficult to identify. The Permanent Court of International Justice has said:[1]

[1] Publications of the Court, Series B. No. 4, p. 23–24.

From one point of view, it might well be said that the jurisdiction of a state is *exclusive* within the limits fixed by international law — using this expression in its wider sense, that is to say, embracing both customary law and general as well as particular treaty law. But a careful scrutiny of par. 8 of Art. 15 shows that it is not in this sense that exclusive jurisdiction is referred to in that paragraph.

The words "solely within the domestic jurisdiction" seem rather to contemplate certain matters which, though they may very closely concern the interests of more than one state, are not, in principle, regulated by international law. As regards such matters, each state is sole judge.

The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.

Every state is equally interested in preserving its field of domestic jurisdiction and will not knowingly contribute to setting precedents by which its own control over such matters will be undermined. In practice, therefore, matters of legitimate domestic jurisdiction will scarcely be questioned as such internationally.[1] Any real danger lies in adducing it illegitimately. For instance, Austria-Hungary alleged that the form of its ultimatum to Serbia was a domestic matter, not subject to international consideration. Under Arts. 12 and 15 it would seem that states would be free to resort to war three months after the dispute had been found to arise out of a matter of domestic jurisdiction.

This much of the system of pacific settlement of the Covenant is given a sanction. If any Member of the League should resort to war in disregard of these engagements, "it shall *ipso facto* be deemed to have committed an act of war against all other states of the League." This amounts, in the final analysis, to saying that each state has agreed to put itself in that position if it resorts to war in less than three months' time after having an answer from whichever of the methods of pacific settlement it has elected. It is not reasonable to suppose that a state would really regard

[1] Philander C. Knox as secretary of state said in this connection that the good faith and self-interest of nations "may be almost as quickly compromised by invoking an erroneous or dangerous principle against a foreign power as by having the principle invoked against them." (Sen. Doc. No. 298, 62d Cong., 2d sess., p. 9; *Cong. Docs.*, Vol. 6175.)

war preferable to giving some method of pacific settlement within its own election a try; at least, not in view of the fact that it would find itself at outs not only with the disputant but with many others. Art. 16, embodying this provision, contemplates undertakings on the part of the law-abiding states to carry it out. The proper implementing of these undertakings has been attempted but not realized. Contrary to a widely held impression, this sanction applies only to the pacific settlement system here outlined.

The hostages given to pacific settlement by the provisions outlined constitute a far-reaching system. They are incomplete in the sense that not all possibilities have been definitely provided for. Leaving aside the question of whether all eventualities should be provided for, there can be no doubt but that the system provides both a flexible and selective series of opportunities to obtain settlement of disputes by third parties.

The Covenant provisions dealing with these three methods — judicial settlement, arbitration and inquiry — are as follows:

Art. 12. The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council.

In any case under this article, the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Art. 13. The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or judicial settlement, and which can not be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, estab-

lished in accordance with Art. 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

Art. 15. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Art. 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavor to effect a settlement of the dispute and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within 14 days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this article and of Art. 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the representatives of one or more of the parties to the dispute.

Art. 16. [1] Should any Member of the League resort to war in disregard of its covenants under Arts. 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking state, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking state and the nationals of any other state, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking state, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are cooperating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the representatives of all the other Members of the League represented thereon.

Art. 17. In the event of a dispute between a Member of the League and a state which is not a Member of the League, or between states not Members of the League, the state or states not Members of the League

[1] The first paragraph of this article is under amendment.

shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Arts. 12 to 16, inclusive, shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a state so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Art. 16 shall be applicable as against the state taking such action.

If both parties to the dispute, when so invited, refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Mediation Overlies System

The system does not quite end at this point, for third parties are under the second paragraph of Art. 11 accorded "the friendly right" to call attention to "any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." In effect, this provision, which is the one under which disputes have most frequently been brought before the Council of the League, gives disinterested parties an opportunity to exercise effectively their own judgment as to whether conditions existing between other states constitute a dispute likely to lead to a rupture. The insoluble element in most differences between states is usually not the subject matter of the dispute, but the *amour propre* with which it has been clothed. This provision, for instance, enabled Great Britain to bring the Aaland Islands question before the Council before Finland and Sweden had committed themselves too rigidly to the national points of view which they had assumed. It can be seen from the broad phraseology that this friendly right may be exercised at any time prior to the parties actually choosing a jurisdiction themselves. It is, consequently, a powerful incentive to them to proceed with their case through the elective system, just as the eventual jurisdiction of the Council for conciliative inquiry is a powerful incentive to

disputants to choose spontaneously arbitration or judicial settlement on terms of their own.

The first paragraph of Art. 11 overlies the system in a different way and at a different stage. "Any war or threat of war" is declared by it a matter of concern to the whole League. In a way this is another method of saying that if states can not themselves tell when their dispute is likely to lead to a rupture, their fellows will do it for them. Should that uncertainty occur, the contracting states have given to each other a very definite peace hostage; for then "the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations."

In many ways the paragraph under discussion is the most interesting in the Covenant of the League of Nations. It is not automatic, but once any state acts on its premises the Members of the League retain for themselves no nationalistic protection from its peaceful operation. On the request of any Member of the League, the Secretary-General is then enjoined to summon a meeting of the Council, whose members, as a part of their contract, are in duty bound to obey the summons. Once in session, the Council finds it mandatory to take any action that will effectually safeguard peace. The provision has been cited once, by Bulgaria in the case of the frontier incident of October, 1925. In that instance the actual proceedings were, however, along the lines of Art. 15 rather than the implications of Art. 11.

The provisions analyzed are:

Art. 11. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Court Provides Judicial Settlement

At the Paris Peace Conference it was obviously impossible to add to the overweighted agenda the constitution of a court, the establishment of which was known to have involved bitter and unsuccessful contentions at the Second Hague Peace Conference. The best practical thing that could be done there was to make definite provision for its realization in the future. This was done in Art. 14 of the Covenant, which reads:

> Art. 14. The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

The Council of the League of Nations on February 13, 1920, proceeded to carry out the injunction by inviting ten jurists of international repute to prepare a plan for the Permanent Court of International Justice. The jurists were not officials of any government and were, therefore, able to work under the sole "inspiration of science and experience." Their appointment was the first instance in which the League of Nations set the excellent precedent of securing expert exploration of a question before submitting it formally to the more restricted consideration of responsible officials.

The Advisory Committee of Jurists, which met at The Hague June 16–July 24, 1920, had before it an extensive memorandum giving the history and analyzing the substance of all plans made before and during the war for the court, as well as all official proposals or draft conventions and three semi-official or private plans. In addition, the analytical memorandum dealt with eight official and eight unofficial schemes.[1]

The work of the committee of jurists was, of course, highly technical and complicated, but beyond the inherent difficulties, no serious obstacles presented themselves. The question which had balked the world for 13 years was settled by the committee in two days on the basis of a proposal made by Elihu Root and Lord Phillimore. This plan "had the advantage of removing any possibility of unfairness," thanks to the "aid of an existing

[1] *Documents presented to the Committee . . .* , p. 37–89.

organization." The plan provided that the election of judges should take place by the concurrent action of the Assembly and Council of the League of Nations, so that it gave the "small nations the veto on everything which took place in the Council and . . . the large nations a veto on all the decisions taken by the Assembly." This avoided the court being "founded on a supposition of discord and intrigue." And "anything which tends to give a particular thing to the great or small nations introduces a principle into the constitution of the Court which it is most desirable to exclude. According to the system of this plan, the judges are not elected by a particular country." [1]

Several other schemes for the election of judges were considered, but this Root-Phillimore plan of securing a choice by the concurrent votes of the Assembly and Council easily won all interested parties and from the time the committee's draft was published, it was felt that it assured the establishment of the Court.

The draft scheme of the Advisory Committee of Jurists was reported to the Council of the League of Nations. The Council examined it at its eighth and tenth sessions and amended it in some particulars after considering amendments proposed by several states. This revised draft was the subject of still other amendment proposals by states. The states were requested to decide concerning the document at the First Assembly of the League, during which the text underwent some further changes, emerging in a form satisfactory to the participating states as the Statute of the Permanent Court of International Justice, covered by a Protocol of Signature. It was submitted to states for ratification, and judges were elected easily in one day, September 16, 1921. The Court convened in preliminary session on January 30, 1922.

Without attempting to give a full view of the importance of the Permanent Court of International Justice in the developing scheme of pacific settlement, several obvious gains may be enumerated.

(1) By providing a judicial forum, the Court completes the system of pacific settlement for which the world has long striven;

(2) The mere solution of the problem of electing judges represented a great advance;

(3) The Court is open to all states, to Members of the League of Nations by statute, and to any other state which deposits with

[1] Elihu Root, *Procès-Verbaux of the Proceedings of the Committee*, p. 389.

the registrar of the Court a declaration by which it accepts its jurisdiction;[1]

(4) The jurisdiction of the Court is dependent upon the parties referring cases to it; as a matter of fact a very wide field of jurisdiction is being assigned to it by reason of compromisory clauses;

(5) Any state which is willing to bind itself to judicial decision in the case of

(*a*) The interpretation of a treaty;

(*b*) Any question of international law;

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation

signs a so-called optional clause. The 25 states which have done so are:

Abyssinia	Esthonia	Netherlands
Austria	Finland	Norway
Belgium	France	Panama
Brazil	Haiti	Portugal
Bulgaria	Latvia	Salvador
China	Liberia	Sweden
Costa Rica	Lithuania	Switzerland
Denmark	Luxemburg	Uruguay
Dominican Republic		

States which have signed the protocol covering the statute are 50 in number — 39 having ratified — as follows:

Abyssinia	Dominican Republic	Norway
Albania	Esthonia	Panama
Australia	Finland	Paraguay
Austria	France	Persia
Belgium	Greece	Poland
Bolivia	Haiti	Portugal
Brazil	Hungary	Rumania
British Empire	India	Salvador
Bulgaria	Irish Free State	Serb-Croat-Slovene State
Canada	Italy	Siam
Chile	Japan	South Africa (Union of)
China	Latvia	Spain
Colombia	Liberia	Sweden
Costa Rica	Lithuania	Switzerland
Cuba	Luxemburg	Uruguay
Czechoslovakia	Netherlands	Venezuela
Denmark	New Zealand	

[1] Statute, Art. 35; League of Nations, *Official Journal*, III, p. 526.

Judgments rendered by the Court have been:

JUDGMENTS[1]

No.	Parties	Subject	Date rendered
1	Great Britain, France, Italy and Japan; Poland, intervener — Germany	S. S. *Wimbledon;* freedom of Kiel Canal	August 17, 1923
2	Greece — Great Britain	Mavrommatis Palestine concessions	August 30, 1924
3	Bulgaria, Greece (summary procedure)	Treaty of Neuilly, Art. 179, Annex, par. 4 (interpretation)	September 12, 1924
4	Bulgaria, Greece (summary procedure)	Interpretation of Judgment No. 3	March 26, 1925
5	Greece — Great Britain	Mavrommatis Jerusalem concessions	March 26, 1925
6	Germany — Poland	German interests in Polish Upper Silesia	August 25, 1925
7	Germany — Poland	[2] German interests in Polish Upper Silesia (the merits)	May 25, 1926

ADVISORY OPINIONS

Art. 14 of the Covenant of the League of Nations stipulates that the Court may give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly. The conception behind this provision was that a matter might involve a question of law, which it was desirable to determine either because a dispute hinged upon it or because a legal definition of the point would make for certainty. The provision has been frequently exercised. The question of the French nationality decrees in Tunis and Morocco (French zone) illustrates this feature of the Court's jurisdiction. Both territories are under the protection of France. Their authorities issued decrees declaring males born in their territories to be of local nationality and liable to service in the army. Persons of British origin were called for service and a dispute arose between Britain and France in consequence. France declined to arbitrate under the 1903 treaty, and eventually Great Britain brought the matter before the League Council. The presentation of the case there resulted in a French claim that citizenship was a matter of domestic juris-

[1] All documentary publications of the Permanent Court on sale and obtainable from World Peace Foundation, American agent.

[2] A decision concerning the joinder of two suits introduced successively by the German Government was rendered February 5, 1926.

diction, Britain holding that in this case its rights were determined by specific undertakings of France in treaties establishing the French position in the territories. Obviously that was a legal contention, and its resolution was referred to the Court for an advisory opinion. The Court's opinion was that the treaty engagements gave British subjects special rights. With this point determined, the parties were able to settle their difference by agreement between themselves.

The Council of the League [1] requests an advisory opinion of the Court, which decides whether it will comply. When the matter is before the Court, Governments or interested organizations may present cases or statements with a view to informing the Court on the matter. No arguments are heard.

ADVISORY OPINIONS

Given at the request of the Council of the League of Nations

No.	*Cases or Statements by*	*Subject*	*Date rendered*
1	Great Britain, Netherlands, International Federation of Trades Unions, International Federation of Christian Trades Unions, International Labor Office	Nomination of delegates to the International Labor Conference	July 31, 1922
2	Great Britain, France, Hungary, Portugal, International Agricultural Commission, International Labor Office, International Federation of Trades Unions	Agricultural labor and the International Labor Organization	August 12, 1922
3	Great Britain, France, Hungary, Portugal, International Agricultural Commission, International Labor Office, International Federation of Trades Unions	Agricultural production and the International Labor Organization	August 12, 1922
4	France and Great Britain	Nature of dispute about nationality decrees in Tunis and Morocco (French zone)	February 7, 1923
5	Finland [2]	Dispute over the autonomy of Eastern Carelia	July 23, 1923

[1] The Assembly may request an advisory opinion but has not had occasion to do so.

[2] Russia declined to present any case or statement.

No.	Cases or Statements by	Subject	Date rendered
6	Germany and Poland	Protection of German settlers in Poland	September 10, 1923
7	Germany and Poland	Acquisition of Polish nationality by German settlers	September 15, 1923
8	Czechoslovakia and Poland	Jaworzina boundary	December 6, 1923
9	Albania, Greece and Serb-Croat-Slovene State	Saint-Naoum Monastery (Albanian frontier)	September 4, 1924
10	Greece and Turkey	Exchange of Greek and Turkish populations	February 21, 1925
11	Poland and the Free City of Danzig	Polish postal boxes in Danzig	May 16, 1925
12	Great Britain and Turkey	Frontier between Turkey and Iraq (Art. 3, par. 2, treaty of Lausanne)	November 21, 1925
13	International Labor Organization, International Federation of Trades Unions, International Confederation of Christian Trades Unions, International Organization of Industrial Employers.	Competence of International Labor Organization in regard to personal work of employers	July 23, 1926

American Adhesion Conditional

The United States, owing to the fact that it was not a Member of the League of Nations, did not participate in the elaboration of the statute or the election of the judges. The President of the United States, however, on February 24, 1923, in a message to the Senate asked for its advice and consent to adhesion to the protocol under four conditions. A long and arduous controversy ensued between the President and Secretary of State and the Senate, and on the part of the public. In the end the Senate advised and consented on January 27, 1926, to a resolution stating conditions which should be accepted by other states parties to the protocol before the signature of the United States should be affixed. No indication is given whether, in the event that these conditions should be accepted, the adherence of the United States to the protocol would be effected without further reference to the Senate.

The first four conditions may be interpreted as originating from the fact that the United States is not a Member of the League of

Nations. The fifth condition relates to the procedure of the Court and places the United States in a special position. The two other paragraphs of the resolution constitute unilateral reservations. The fifth condition and the two reservations are the first attempts on the part of any state contemplating participation in the Statute to modify its terms in any way. The text of the resolution reads:

Whereas the President, under date of February 24, 1923, transmitted a message to the Senate accompanied by a letter from the Secretary of State, dated February 17, 1923, asking the favorable advice and consent of the Senate to the adhesion on the part of the United States to the protocol of December 16, 1920, of signature of the statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the optional clause for compulsory jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adhesion: Therefore be it

Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the adhesion on the part of the United States to the said protocol of December 16, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the optional clause for compulsory jurisdiction contained in said statute) and that the signature of the United States be affixed to the said protocol; subject to the following reservations and understandings which are hereby made a part and condition of this resolution, namely:

1. That such adhesion shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the treaty of Versailles.

2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other states, members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

4. That the United States may at any time withdraw its adherence to the said protocol and that the statute for the Permanent Court of International Justice adjoined to the protocol shall not be amended without the consent of the United States.

5. That the court shall not render any advisory opinion except publicly

after due notice to all states adhering to the Court and to all interested states and after public hearing or opportunity for hearing given to any state concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

The signature of the United States to the said protocol shall not be affixed until the powers signatory to such protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adhesion by the United States to the said protocol.

Resolved further, As a part of this act of ratification that the United States approve the protocol and statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other state or states can be had only by agreement thereto through general or special treaties concluded between the parties in dispute; and

Resolved further, That adherence to the said protocol and statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall adherence to the said protocol and statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

Treaties of Conciliation

Reference has been made to the fact that Art. 12 of the Covenant is substantially the formula first effectively employed in the American treaties for the advancement of peace; whereas Art. 15 defining the conciliatory jurisdiction of the Council is the institutional application of the commission of inquiry employed in those treaties.

Norway, in examining Art. 15, thought that the conciliatory system should be developed, and on July 24, 1920, proposed amendments to bring this about. It also submitted a draft annex to the Covenant providing for commissions of both arbitration and conciliation to be set up by all League Members *inter se*. There would be five commissioners to hear both cases of arbitration under Art. 13 and pursue the process of inquiry and conciliation on behalf of the respective two parties. Sweden submitted an amendment to this scheme by which it would be

confined to conciliation committees only.[1] These proposals were considered by the First Assembly and remitted to the Committee on Amendments to the Covenant, which considered numerous suggestions in February, June and September, 1921.

Both the Committee on Amendments and the Committee of the Second Assembly felt that it was not desirable to introduce so rigid a system into the Covenant. It was not felt that the inquiry procedure would always be necessary in disputes, while the Council was always at liberty to appoint such commissions. The disputes were likely to be so various that specialists of different qualifications would be required, while in many cases the Council would undoubtedly be considered as the most competent body to adjust or settle a dispute. The great desirability of developing inquiry was, however, definitely recognized.[2] In the Third Assembly definite action in this direction was taken.[3] The resolution adopted by it on September 22, 1922, embodied, as it were, a standard set of ideas for commissions. The preamble represents the advice which the 46 Members of the League present at the Third Assembly gave to themselves. It reads:[4]

With a view to promoting the development of the procedure of conciliation in the case of international disputes, in accordance with the spirit of the Covenant, the Assembly recommends the Members of the League, subject to the rights and obligations mentioned in Art. 15 of the Covenant, to conclude conventions with the object of laying their disputes before conciliation commissions formed by themselves.

The organization of these commissions, their competence and the procedure to be followed before them, shall be freely determined by the contracting parties. The parties are recommended in this connection to look for guidance to the provisions contained in the Hague convention of October 18, 1907, for the pacific settlement of international disputes,

[1] *Records of the First Assembly, Meetings of the Committees*, I, p. 73–89.

[2] *Records of the Second Assembly, Meetings of the Committees*, I, p. 148; Committee on Amendments to the Covenant, First Report (A. 24. 1921), p. 17.

[3] The Council on January 11, 1922, had appointed a committee to examine the question and its recommendations were accepted by the Council on July 18, 1922. (*Official Journal*, III, p. 903–907.) The Third Assembly received the committee's report from the Council. The Danish Government proposed the establishment of a conciliation commission attached to the Permanent Court of International Justice at the Sixth Assembly (*Records of the Sixth Assembly, Meetings of First Committee*, p. 51, 53).

[4] *Resolutions and Recommendations adopted by the Assembly during its third session*, p. 9.

and, in particular, to the provisions concerning the hearing of witnesses, procedure by employment of experts, rogatory commissions, inspection of places, replacement of members of the commission.

The rules laid down in the following articles, in particular, are recommended to the Members of the League for adoption. At the request of the Members concerned the Secretary-General may offer them the assistance of the Secretariat for the conclusion of conciliation conventions.

Apart from the other means placed at its disposal by the Covenant to assure the maintenance of peace, the Council may, if necessary, have recourse to the service of the conciliation commission formed by the parties; it may invite them to bring their disputes before the commission, or it may refer to the commission any dispute which may have been submitted to it by one of the parties in virtue of Art. 15 of the Covenant.

A conciliation convention concluded between two states of which one only is a Member of the League of Nations, or of which neither is a Member of the League, will be applicable subject to the procedure established by Art. 17 of the Covenant.

The Assembly expresses the hope that the competence of conciliation commissions will extend to the greatest possible number of disputes, and that the practical application of particular conventions between states, as recommended in the present resolution, will, in the near future, make possible the establishment of a general convention open to the adhesion of all states.

"Arbitration, Security, Reduction of Armament"

The third line of development since the war has recognized the essential relationship previously pointed out between pacific settlement and armament. This has been developed from the force of circumstances rather than from reasoning. The Covenant of the League of Nations is a series of engagements taken by the Member states between themselves. One of those engagements is in Art. 8:

> The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council is enjoined to "formulate plans for such reduction for the consideration and action of the several Governments." In fulfilment of this injunction the armament problem has been continuously discussed at Geneva.

It was decided in the First Assembly in 1920 that the problem should not be considered solely by military experts. The Council was invited "to instruct a temporary commission composed of persons possessing the requisite competence in matters of a political, social and economic nature to prepare" reports and proposals. The Second Assembly expressed the desire that these proposals should be given the precise form of a draft treaty. In the following year an Assembly resolution declared the principle that, "moral disarmament is an essential preliminary condition of material disarmament, and that this moral disarmament can only be achieved in an atmosphere of mutual confidence and security." The committee was able to submit to the Fourth Assembly a draft treaty of mutual assistance, which was much revised in an Assembly committee, where it was also criticized for failure to connect reduction of armament with the development of pacific settlement of international disputes.[1]

Between the Fourth and Fifth Assemblies the reparation question was advanced toward solution by the adoption of the Experts' (Dawes) Plan and the agreements of the London conference to carry it into effect. The series of London agreements was made under the guiding spirit of Premiers Herriot of France and MacDonald of Great Britain, who were instrumental in providing for arbitration in each of the 19 places in the system where disputes might arise.[2] Simultaneously various states,[3] among which were Great Britain, the Scandinavian and other north European countries, were reporting to Geneva that one of their objections to the draft treaty of mutual assistance was its omission of consideration of pacific settlement. A private group of Americans had prepared a plan which contributed the salient idea that a state refusing to accept the jurisdiction of the Court should be deemed an aggressor.[4]

Premiers Herriot and MacDonald in the Fifth Assembly of the League made strong speeches which emphasized the relation between the three problems of arbitration, security and the re-

[1] Records of the Fourth Assembly, *Plenary Meetings*, p. 150, speech by Christian L. Lange of Norway.

[2] See this Series, Vol. VII, Reparation, Part VI, p. 314.

[3] Records of the Fifth Assembly, *Meetings of the Third Committee*, p. 129; *cf.*, *Plenary Meetings*, p. 481.

[4] *Ibid.*, p. 169.

duction of armament. The response to these speeches resulted in a resolution remitting to the Assembly's First and Third Committees the problem of working out a plan to realize these three requirements.[1] The result was the Protocol for the Pacific Settlement of International Disputes, founded upon the basic conception that "there can be no arbitration or security without disarmament, nor can there be disarmament without arbitration and security." The protocol was intended, in amplification of the Covenant, to provide a complete system for settling differences and to provide a basis upon which a general conference for the reduction of armament could proceed.[2]

The statement made by the British representative in the Council on March 12, 1925, spelled the doom of that document. While being directed largely at the sanction provisions of the protocol, that statement closed with a formal declaration "that the best way of dealing with the situation is, with the cooperation of the League, to supplement the Covenant by making special arrangements in order to meet special needs."[3]

From the time the protocol was put forward the interrelation of "arbitration, security and disarmament" was inextricably fixed in current statecraft. At the time the British representative spoke, the German Government had already proposed to France and its allies a pact of the states interested in the Rhine "not to wage war," with which could be combined "a comprehensive arbitration treaty." This German proposal of February 9, 1925, resulted in the initialing at Locarno on October 16, 1925,[4] of a treaty of mutual guaranty covering the Rhine situation, which besides declaring the purpose not to resort to war against each other provides that the states primarily concerned in the Rhine "undertake to settle by peaceful means . . . all questions of every kind, which may arise between them." The realization of this undertaking is provided for in arbitration conventions between Germany and Belgium and Germany and France, and arbitration treaties between Germany and Poland and Germany and Czechoslovakia.

[1] Records of the Fifth Assembly, *Meetings of the Third Committee*, p. 129; *cf.*, *Plenary Meetings*, p. 77.

[2] *Ibid.*, p. 479. All the essential documents relating to the protocol are printed in this Series, Vol. VII, Nos. 7, 8 and 9.

[3] *Official Journal*, VI, p. 450.

[4] See *The Locarno Conference*, this Series, Vol. IX, No. 1.

This practical application of "arbitration, security and disarmament" gave an impetus to the development both of arbitration and reduction of armament. With the objective of realizing security, the development in each field in 1926 has been separate, due primarily to the fact that even the very elements of the armament problem have required long and arduous preliminary labor for their mere definition. However, there is no reason to doubt that the results of an armament conference will be conditioned upon the factor of pacific settlement.

The scale of armament indicates a state's conception of its lack of security. In the prewar period armament increased simultaneously with the increase of both the policy and practice of pacific settlement. The situation was logically contradictory, since it ought to follow that increase in provision for pacific settlement would reduce the necessity of provision for warlike settlement. The explanation, however, is obvious. The most important states, with the widest range of disputatious questions, with the largest interests and the most contacts, were precisely those which reserved from the procedure of pacific settlement questions which might cause a war. As a consequence, the development of pacific settlement did not have a direct effect on armament standards, which formed a nucleus for the breeding of suspicion. The proper relationship is beginning to exist, illustrated by French reduction of the army on the entrance into force of the Locarno treaties.[1]

Practice of Pacific Settlement

The practice of pacific settlement since the World War has been considerable. The Tacna-Arica award, which is not yet executed, has attracted the most attention. The bulk of arbitration has been in systems set up since the war. The Geneva convention on Upper Silesia between Germany and Poland of May 15, 1922, sets up both a mixed commission and an arbitral tribunal, which are given jurisdiction over all disputes arising under it. The High Commissioner of the League of Nations for Danzig renders decisions respecting the differences between Danzig and Poland, which are published in annual volumes.

[1] See in this connection the report and resolution of the Seventh Assembly (A. 79, 1926. IX).

Other systems, such as minorities and mandates, look to the jurisdiction of the Permanent Court. The Organization for Communications and Transit of the League has been made a conciliatory commission for technical disputes, and there is a tendency to create a similar system for other technical fields.

Mexico is settling the claims resulting from its revolution with the United States, Great Britain, France, Germany, Spain and others by a series of claims commissions, which together will hear many thousands of cases.

The treaty of Versailles and other treaties of peace produced the most extensive series of arbitrations in history. The constituent provisions are in Part X, economic clauses, secs. III–VII. The problems dealt with are debts due from the nationals of one belligerent to the nationals of an opponent, the settlement of which was prevented by war; the adjustment of property, rights and interests as a result of the war; contracts, prescriptions, judgments, and industrial property.

By the treaties a series of clearing offices was set up in each country for the handling of claims accruing under these heads, the clearing offices in most cases having custody of the alien property involved, as well as of the payment of claims. Debts not adjusted through the clearing offices, as well as the other categories of claims are, in case of dispute, referred to mixed arbitral tribunals established between each of the allied and associated states on the one hand, and the defeated states on the other. Each tribunal consists of three members, one appointed by each party and the president chosen by agreement between them.

The system has the effect of settling all possible claims either directly between the parties or administratively through the clearing offices. Questions not susceptible to such solutions are referred to the tribunals. Accounts available under these provisions deal only with Art. 296, debts, and Art. 297, property, rights and interests, of the treaty of Versailles and the corresponding articles in the other treaties.

By the report of the British controller of the clearing office[1] it appears that British claims notified to the German clearing office amounted to £67,217,000, of which £18,671,000 had been

[1] *Fifth Annual Report of the Controller* (London, 1925), appendices II, III, VIII–X.

withdrawn; while the German claims notified to the British clearing office amounted to £62,860,000, of which £38,376,000 had been withdrawn.

In addition under Arts. 297 and 300 the British claims notified amounted to £69,498,000. More than 1,000,000,000 francs of claims under Art. 297 had been notified by others. The account under Art. 296 for other states included more than 4,000,000,000 francs of claims notified to the German clearing offices and some 1,500,000,000 francs notified by Germany to allied clearing offices. The number of claims under Art. 296 reached impressive proportions as follows:

	Against Germany	*By Germany*
Belgium	24,534	71,537
Great Britain	94,469	265,507
France	309,407	339,322
Greece	2,004	7,010
Italy	[1]	[1]
Siam	75	495

The mixed arbitral tribunals are more than 30 in number and have been producing decisions on disputed points arising from the great mass of claims indicated at a rate of about 200 per year since 1921.[2]

In general the system of clearing offices established by other states has been distributing property corresponding to that which has been held in the United States by the Alien Property Custodian. This property had amounted to $578,735,634 on December 31, 1925, of which amount $304,104,730 had been paid out.[3] Claims filed numbered 35,442.

The mixed arbitral tribunals of the treaties of peace are open for the trial of causes brought by either allied or former enemy nationals. The United States established a mixed claims commission by an agreement signed at Berlin on August 10, 1922, to pass upon the following categories: (1) claims of American citizens arising since July 31, 1914; (2) other claims for loss of damage to which the United States or its nationals have been subjected; (3) debts owing to American citizens by the German Government or German nationals.

[1] Not available.

[2] For the decisions see *Recueil des décisions des Tribunaux arbitraux mixtes* (Paris, Sirey, 1921–).

[3] 69th Cong., 1st sess., Sen. Doc. No. 94, p. 11.

The German-American Mixed Claims Commission sits in Washington and consists of one commissioner appointed by each Government and an umpire selected jointly. Simultaneously with signing the agreement the German Chancellor wrote to the American ambassador: "In order to give the American Government proof of its confidence the German Government has the honor to request the President of the United States to cause an American person seeming to him suited for this responsible office, to accept the position of umpire." [1]

In compliance with this notable request the late Justice William Rufus Day of the Supreme Court was designated by the President. He sat until May 3, 1923, and was then succeeded as umpire by Edwin B. Parker of Louisiana, who presided throughout the period in which the commission rendered decisions. The high judicial character of his work has not only justified the confidence expressed in him but resulted in his choice as the sole commissioner under the agreement with Austria and Hungary of November 26, 1924, for the settlement of similar claims. It is difficult to conceive of a higher tribute to a judge.

A total of 12,416 claims for $1,500,000,000 was filed. Of these claims up to June 30, 1925, 503 totaling $118,000,000 were found to be duplicates, and 5,824 totaling $295,000,000 had been dismissed. As many of the claims were of a similar character, the commission was able to make a series of administrative decisions which could be applied by the agents, the amount in each case being certified by the commission. It is expected that the total awards will amount to about $150,000,000, or one-tenth of the original figures. [2]

Summary of Postwar Progress

No field of international relations is being more sedulously cultivated than pacific settlement. The only adequate way to estimate the value of the agreements reached is to analyze each of them technically, which is manifestly beyond the scope of this

[1] *Treaties, Conventions*, III, p. 2602.

[2] Mixed Claims Commission United States and Germany, Administrative Decisions and Opinions of a General Nature and Opinions in Individual Lusitania Claims and Other Cases to June 30, 1925, (Washington, 1925); and *First Report* of Robert W. Bonynge, agent of the United States before the Mixed Claims Commission United States and Germany (Washington, 1925), p. 791.

study. However, an examination of available texts justifies an attempt to summarize the character and scope of postwar development. This may be done in four categories:

(1) bilateral compromisory clauses;

(2) collective general agreements on specific subjects (compromisory clauses in multilateral conventions);

(3) bilateral treaties (or general clauses);

(4) collective general agreements (multilateral treaties) — entirely new since the war.

(1) *Bilateral compromisory clauses.* Lange in 1913 listed 111 compromisory clauses providing for arbitration of disputes arising only from the treaties in which they were contained. Many of these are no longer in force. In the first 1,000 treaties registered with the League of Nations and published in the *Treaty Series* since July 5, 1920, more than 180 bilateral compromisory clauses are included. An illustration of such clauses is Art. 6 of the convention of December 27, 1924, between the United States and the Dominican Republic, which was inserted in fulfilment of the general injunction in the Dominican Constitution. The article begins:[1]

> ART. 6. The determination of any controversy which may arise between the contracting parties in the carrying out of the provisions of this convention shall, should the two Governments be unable to come to an agreement through diplomatic channels, be by arbitration.

(2) *Collective agreements containing compromisory clauses.* Lange noticed four of these in existence before the war, all of which continue in force or are superseded. The practice of inserting the clause was then regarded as established. Since 1920 such a clause has been inserted in all multilateral conventions. The text employed in the statute on freedom of transit, April 20, 1921, is illustrative:[2]

> Art. 13. Any dispute which may arise as to the interpretation or application of this statute which is not settled directly between the parties themselves shall be brought before the Court of International Justice unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

[1] U. S. *Treaty Series*, No. 726.

[2] League of Nations *Treaty Series*, VII, p. 13.

Twenty-seven international conventions containing an equivalent clause are in force. Besides there are several instances of a special system of arbitration such as that of the Universal Postal Union. The present provision is Art. 10 of the convention of August 28, 1924, which applies equally to six agreements signed the same day.[1]

With reference to multilateral agreements it is well to keep in mind the tremendous increase of obligation which they produce. Treaties bind states each to each, and, as a consequence, the multilateral agreement produces a surprising number of relationships. The 1924 Universal Postal convention is the most numerously signed international instrument in the world, 93 postal administrations being parties to it. Each of these is bound by its terms to 92 others, so that as a matter of mathematics the single document sets up a network of 8,556 relationships. A bilateral treaty represents the dual relations of A to B and B to A, so that the single convention represents the equivalent of 4,278 bilateral instruments between the postal administrations of the world.[2] When the convention on freedom of transit had 29 ratifications and adhesions it was similarly the equivalent of 406 bilateral conventions, etc.

It can be seen from the above remarks that the application of pacific settlement by the insertion of a compromisory clause in multilateral conventions has had a phenomenal development since 1920.

Its actual use is even more extensive. Arts. 411–420 of the labor part of the treaties of peace may be regarded as insuring pacific settlement for disputes arising from the labor conventions, which numbered 23 through 1926. The series of 19 minority treaties, declarations and agreements contain provisions for pacific settlement and may be constructively regarded as multilateral, since all members of the League of Nations are parties to them through the action of its Council. The same considerations apply to the 15 mandates.

(3) *Bilateral treaties or general clauses.* Fairly extensive investigation indicates about 170 bilateral arbitral treaties in force before the war which have continued since the war. These are rapidly

[1] League of Nations *Treaty Series*, XL, p. 37.

[2] The formula is to multiply the number of ratifications by that number less one and divide by two.

being superseded. The 90 treaties made since 1919 employ several formulas. No attempt will be made to appraise the value of these except to say that those in active use are a great improvement upon those generally employed before the war. It may be enlightening to give examples of the several formulas.[1]

(*a*) In arbitration treaties the prewar exception of questions of national honor and vital interest has practically ceased except in American and British treaties. There is an American effort to apply these treaties to judicial settlement by an exchange of notes attached to eight of them in which it is said:[2]

> In the event that the Senate gives its assent to the proposal, I understand that the Government of will not be averse to considering a modification of the convention of arbitration which we are renewing, or the making of a separate agreement, providing for the reference of disputes mentioned in the convention to the Permanent Court of International Justice.

Arbitration treaties may vary all the way from this to those of unlimited application, in which category are regarded those which except the constitutional provisions of either state. The engagement of Peru and Uruguay of July 18, 1917, illustrates both the prewar and postwar unlimited formula:[3]

> Art. 1. The high contracting parties undertake to submit to arbitration all disputes of whatever nature which, for any cause whatsoever, may arise between them and which it may have proved impossible to settle amicably by direct diplomatic negotiations.

(*b*) A limited arbitration treaty together with a conciliation treaty may have the effect of affording a neutral forum for all disputes that may arise. This is the case between Sweden and the United States as a result of the arbitration treaty of 1924 and the treaty for the advancement of peace of October 13, 1914.

(*c*) The combination of arbitration and conciliation may be made in a single document, so as to cover all questions at issue.

[1] The types are collected in League of Nations, *Arbitration and Security*. Systematic survey of the arbitration conventions and treaties of mutual security deposited with the League of Nations (C. 34. M. 74. 1925. V).

[2] The treaties in question are: Great Britain, June 23, 1923; France, July 19, 1923; Japan, August 23, 1923; Portugal, September 5, 1923; Norway, November 26, 1923; The Netherlands, February 13, 1924; Sweden, June 24, 1924; Liberia, February 10, 1926. *Cf.* also notes to liquor smuggling conventions.

[3] League of Nations *Treaty Series*, XIV, p. 359; *Arbitration and Security*, p. 52.

The first treaty of this character was between Germany and Switzerland, signed at Bern, December 3, 1921, the engagement of which is:[1]

Art. 1. The contracting parties undertake to refer to the procedure of arbitration or conciliation disputes of any nature whatsoever which may arise between them and which it has not been possible to settle, within a reasonable period, by diplomatic means.

Disputes for the solution of which a special procedure has been laid down in other conventions in force between the contracting parties shall be settled in accordance with the provisions of such conventions.

(*d*) States parties to the Statute of the Permanent Court have been adding judicial settlement to the combination. This is the most popular type of pacific settlement treaty at the present time. Its engagement may be illustrated by the convention between Denmark and Sweden signed at Stockholm June 27, 1924, the engagement of which is:[2]

Art. 1. The contracting parties undertake to refer to a permanent commission, to be appointed in the manner set forth below, for investigation and settlement by conciliation all disputes of any nature whatever which it has not been possible to settle within reasonable time through diplomatic channels, and which should not, under the terms of the Statute of the Permanent Court of International Justice or of any other agreement between the parties, be submitted either to the Permanent Court or to a court of arbitration.

(*e*) States which have signed the optional clause creating Permanent Court jurisdiction go further and eliminate arbitration except as called for in compromisory clauses. Denmark and Switzerland signed such a treaty June 6, 1924, the engagement of which is:[3]

Art. 1. The contracting parties undertake to submit to a permanent conciliation commission any disputes that may arise between them and which it may not have been possible to settle by the diplomatic channel, and which shall not be capable of judicial or arbitral settlement in accordance with Art. 36, par. 2, of the Statute of the Permanent Court of International Justice, or in conformity with any other international convention in force between the contracting parties.

[1] League of Nations *Treaty Series*, XII, p. 271; *Arbitration and Security*, p. 107.

[2] *Ibid.*, XXXIII, p. 149; *Arbitration and Security*, p. 90.

[3] *Ibid.*, XXXIV, p. 175; *Arbitration and Security*, p. 102.

Each of the contracting parties shall be free to decide at what period the procedure of conciliation may be substituted for diplomatic negotiations.

The contracting parties may agree that a dispute which is capable of judicial or arbitral settlement shall be previously submitted to the procedure of conciliation.

The Locarno arbitration instruments constructively employ something of the same sort, since they prescribe that the four categories of disputes mentioned in Art. 13 of the Covenant, which are the same as those covered by the optional clause, shall be submitted either to arbitration or judicial settlement.

(*f*) Arbitration may be abandoned in favor of judicial settlement. In this case reversion to the old exceptions is likely. An illustration is the treaty between Japan and Switzerland signed at Tokio, December 26, 1924:[1]

Art. 1. All disputes of a legal nature which may arise between the high contracting parties and which it may not have been possible to settle by diplomacy or by any other means of conciliation shall be submitted for judicial settlement.

Either of the high contracting parties may, however, decline to submit for judicial settlement any dispute in which it considers its vital interests, independence or honor to be at stake or which it deems to affect the interests of third powers.

(4) *Collective general agreements.* These agreements are five in number:

(*a*) Arts. 12–17 of the Covenant of the League of Nations. With 55 states Members of the League this engagement, previously analyzed, has the same effect as 1,485 bilateral treaties.

(*b*) The optional clause attached to the Protocol of Signature covering the Statute of the Permanent Court of International Justice. Assuming that the 25 signatories regard it as effective for themselves it is the equivalent of 300 bilateral treaties.

The Statute of the Permanent Court of itself creates no jurisdiction. Its existence, however, is the primary reason for the rapid postwar development of compromisory clauses, both bilateral and multilateral. The registry of the court examines constantly treaties negotiated and publishes a compilation of those parts of them conferring jurisdiction upon the Court. Up

[1] League of Nations *Treaty Series*, XLIII, p. 395; *Arbitration and Security*, p. 199.

to June 15, 1925, 103 documents had conferred such jurisdiction. Most of these are included in the statistics given above under compromisory clauses, but there are many such assignments not so included. For instance, 13 articles of the treaty of Versailles confer jurisdiction on the court.

(*c*) The treaty to avoid or prevent conflicts between American states signed at Santiago, Chile, May 3, 1923, is a conciliation arrangement providing for two permanent commissions. It has been ratified by five states.[1]

(*d*) The convention for establishment of an international Central American tribunal signed at Washington, Feb. 7, 1923, is limited to the five Central American states.[2]

(*e*) The convention for the establishment of commissions of inquiry signed at Washington, Feb. 7, 1923, is in force for the United States and for four Central American states.[2]

[1] League of Nations *Treaty Series*, XXXIII, p. 25.

[2] See p. 550, *supra*.

APPENDIX

INDEX OF BIPARTITE ARBITRATION TREATIES

1. 1828–1918

The following list contains only treaties believed to be currently in force, including general engagements in the form of compromisory clauses. Where only summary notice is given, details as to ratification and duration and references to text will be found in Denys P. Myers' "Arbitration Engagements now existing in Treaties, Treaty Provisions and National Constitutions" (World Peace Foundation, Pamphlet Series, V, No. 5, pt. iii).

Provisions calling for the pacific settlement of all disputes are annotated "unlimited." Included in this type are those — the Argentine texts being an example — which apply to all disputes "except when they affect the principles of the constitution of either country." Obviously, no state can bind itself internationally to violate its constitution; so that the exception expressed in such treaties is implied in those not specifically mentioning it.

References are to British and Foreign State Papers; Traités généraux d'arbitrage communiqués au Bureau international de la Cour permanente d'arbitrage; Treaties, Conventions, Protocols and other international Acts between the United States and other Powers, 1910–1923, Vol. III; and League of Nations, *Treaty Series*.

1828

Argentina-Brazil. Signed at Rio de Janeiro, Aug. 27; preliminary convention of peace between the United Provinces of the Rio de la Plata and the Emperor of Brazil, Art. 18 of which is mediatory clause before declaration of war.

1829

Colombia-Peru. UNLIMITED. Signed at Guayaquil, Sept. 22; treaty of peace, Art. 19 being general arbitral clause.

1842

Colombia (New Granada)-**Venezuela.** UNLIMITED. Signed at Carácas, July 23; treaty of friendship, commerce and navigation, Art. 4 of which is general arbitral clause before declaration of war.

1848

Mexico-United States. Signed at Guadalupe Hidalgo, Feb. 2; treaty of peace, friendship, limits and settlement, Art. XXI of which is general arbitral clause.

1856

Colombia (New Granada)-**Ecuador.** UNLIMITED. Signed at Bogotá, July 9; treaty of friendship, commerce and navigation, Art. 2 of which is general arbitral clause.

1863

Bolivia-Peru. UNLIMITED. Signed at Lima, Nov. 5; treaty of peace and amity, Art. 26 of which provides for general arbitration.

1870

Colombia-Peru. UNLIMITED. Signed at Lima, Feb. 10; treaty of amity, commerce and navigation, Art. 32 of which is general arbitral clause without reserve.

1873

Bolivia-Peru. UNLIMITED. Signed at Lima, Feb. 6; treaty of defensive alliance, Art. 8 of which renders obligatory the use of means of conciliation before a rupture of relations.

1874

Guatemala-Nicaragua. UNLIMITED. Signed at Guatemala, Feb. 13; treaty of amity and commerce, Art. 2 of which is general arbitral clause without reserve.

Argentina-Peru. UNLIMITED. Signed at Buenos Aires, Mar. 9; treaty of amity, commerce and navigation, Art. 33 of which is general arbitral clause without reserve.

1876

Argentina-Paraguay. Signed at Buenos Aires, Feb. 3; definitive treaty of peace, Art. XXI of which is general semi-arbitral clause.

1880

Colombia-Salvador. UNLIMITED. Signed at Paris, Dec. 24; convention for peace, general arbitration and an international American congress, Art. I of which is unlimited; in force from Jan. 7, 1882; 71 B. and F. S. P., 712; Reyes, *Tratados del Salvador* (1896), 47; no provision on expiration.

1882

Spain-Venezuela. UNLIMITED. Signed at Caráeas, May 20; treaty of commerce and navigation, Art. 14 of which is general arbitral clause without reserve.

1883

Paraguay-Uruguay. UNLIMITED. Signed at Asunción, Apr. 20; treaty of peace and recognition of debt, Art. 8 of which provides for arbitration of conflicts capable of compromising amicable relations.

Salvador-Venezuela. UNLIMITED. Signed at Caráeas, Aug. 27; treaty of amity, commerce and navigation, Art. 42 of which is general arbitral clause without reserve.

Salvador-Switzerland. UNLIMITED. Signed at Bern, Oct. 20; treaty of amity, establishment and commerce, Art. 13 of which is general arbitral clause without reserve.

Nicaragua-Salvador. UNLIMITED. Signed at San Salvador, Nov. 17; treaty of amity, commerce and extradition, Art. 33 of which is general arbitral clause without reserve.

1884

Belgium-Venezuela. UNLIMITED. Signed at Carácas, Mar. 1; treaty of amity, commerce and navigation, Art. 2 of which is general arbitral clause without reserve.

1887

Belgium-Ecuador. UNLIMITED. Signed at Brussels, Mar. 5; treaty of amity, commerce and navigation, Art. 2 of which is general arbitral clause without reserve.

1888

Ecuador-Spain. UNLIMITED. Signed at Madrid, May 23; additional treaty of peace and amity, Art. 1 of which is general arbitral clause applicable to treaty and nontreaty disputes.

Ecuador-Switzerland. UNLIMITED. Signed at Paris, June 22; treaty of amity, establishment and commerce, Art. 4 of which is general arbitral clause without reserve.

1890

Ecuador-Salvador. UNLIMITED. Signed at Washington, Mar. 29; treaty of amity, commerce and navigation, Arts. 1 and 2 of which are general arbitral clauses without reserve.

Guatemala-Salvador. UNLIMITED. Signed at Guatemala, Nov. 15; treaty of peace and amity, Arts. 5–8 of which are general arbitral provisions without reserve.

1893

Mexico-Salvador. UNLIMITED. Signed at Mexico City, Apr. 24; treaty of amity, commerce and navigation, Art. 1 of which is general arbitral clause for all questions.

1894

Colombia-Spain. UNLIMITED. Signed at Bogotá, Apr. 28; treaty additional to treaty of peace and amity of Jan. 30, 1881, Art. 1 of which is general arbitral clause without definite reserve.

Netherlands-Portugal. UNLIMITED. Signed at Lisbon, July 5; declaration, Art. 7 of which is general arbitral clause without definite reserve.

Honduras-Spain. UNLIMITED. Signed at Guatemala, Nov. 17; treaty of peace and amity, Art. 2 of which is general arbitral clause applicable to treaty and nontreaty disputes.

1895

Guatemala-Honduras. UNLIMITED. Signed at Guatemala, Mar. 10; treaty of union, and arbitration, commerce and navigation, Arts. 2–4 of which are general arbitral clauses specifying arbitral questions and then without reserve.

Costa Rica-Guatemala. UNLIMITED. Signed at Guatemala, May 15; general treaty, Art. 1 of which is general arbitral clause without reserve.

Costa Rica-Salvador. UNLIMITED. Signed at San Salvador, June 12; general treaty, Art. 1 of which is general arbitral clause without reserve.

Costa Rica-Honduras. UNLIMITED. Signed at San José, Sept. 28; general treaty, Art. 2 of which is general arbitral clause without reserve.

1897

Peru-Spain. UNLIMITED. Signed at Lima, July 16; treaty additional to treaty of peace of Aug. 14, 1879, Art. 1 being general arbitral clause without definite reserve.

1899

Brazil-Chile. UNLIMITED. Signed at Rio de Janeiro, May 18.

Argentina-Uruguay. UNLIMITED. Signed at Buenos Aires, June 8.

Argentina-Paraguay. UNLIMITED. Signed at Asunción, Nov. 6.

1901

Bolivia-Peru. UNLIMITED. Signed at La Paz, Nov. 21.

1902

Mexico-Spain. Signed at Mexico City, Jan. 11.

Spain-Uruguay. UNLIMITED. Signed at Mexico City, Jan. 28.

Salvador-Spain. UNLIMITED. Signed at Mexico City, Jan. 28.

Dominican Republic-Spain. UNLIMITED. Signed at Mexico City, Jan. 28.

Argentina-Bolivia. UNLIMITED. Signed at Buenos Aires, Feb. 3.

Colombia-Spain. UNLIMITED. Signed at Mexico City, Feb. 17.

Bolivia-Spain. UNLIMITED. Signed at Mexico City, Feb. 17.

Guatemala-Spain. Signed at Mexico City, Feb. 28.

Mexico-Persia. UNLIMITED. Signed at Washington, May 14; treaty of commerce and navigation, Art. 5 of which is general arbitral provision.

Argentina-Chile. UNLIMITED. Signed at Santiago, May 28.

1903

France-Great Britain. Signed at London, Oct. 14.

France-Italy. Signed at Paris, Dec. 25.

Cuba-Italy. Signed at Havana, Dec. 29; treaty of peace, commerce, navigation, emigration and arbitration, Art. XXVII of which is general arbitral clause.

1904

Great Britain-Italy. Signed at Rome, Feb. 1.

Denmark-Netherlands. UNLIMITED. Signed at Copenhagen, Feb. 12.

France-Spain. Signed at Paris, Feb. 26.

Great Britain-Spain. Signed at London, Feb. 27.

France-Netherlands. Signed at Paris, Apr. 6.

Portugal-Spain. Signed at Lisbon, May 31.

France-Norway. Signed at Paris, July 9.

France-Sweden. Signed at Paris, July 9.

Great Britain-Norway. Signed at London, Aug. 11.

Great Britain-Sweden. Signed at London, Aug. 11; effective till Nov. 9, 1929.

Netherlands-Portugal. Signed at The Hague, Oct. 1.

Nicaragua-Spain. UNLIMITED. Signed at Guatemala City, Oct. 4.

Belgium-Russia. Signed at St. Petersburg, Oct. (17) 30.

Belgium-Switzerland. Signed at Bern, Nov. 15.

Great Britain-Portugal. Signed at Windsor Castle, Nov. 16.

Italy-Switzerland. Signed at Rome, Nov. 23.

Belgium-Sweden.[1] Signed at Brussels, Nov. 30.

Norway-Russia. Signed at St. Petersburg, (Nov. 26) Dec. 9.

Russia-Sweden.[2] Signed at St. Petersburg, (Nov. 26) Dec. 9.

Sweden-Switzerland. Signed at Berlin, Dec. 17.

Norway-Switzerland. Signed at Berlin, Dec. 17.

1905

Belgium-Spain. Signed at Madrid, Jan. 23.

Norway-Spain. Signed at Madrid, Jan. 23.

Spain-Sweden. Signed at Madrid, Jan. 23.

[1] See April 30, 1926.

[2] Status not determined.

Great Britain-Netherlands. Signed at London, Feb. 15.

Denmark-Russia. Signed at St. Petersburg, (Feb. 16) Mar. 1.

Italy-Peru. Signed at Lima, Apr. 18.

Belgium-Denmark. Signed at Brussels, Apr. 26.

Belgium-Greece. Signed at Athens, (Apr. 19) May 2.

Italy-Portugal. Signed at Lisbon, May 11.

Honduras-Spain. Signed at Madrid, May 13.

Belgium-Rumania. Signed at Bukharest, May (14) 27.

Colombia-Ecuador. UNLIMITED. Signed at Quito, Aug. 10; general treaty of friendship, commerce and navigation, arbitration (Art. III).

Portugal-Switzerland. Signed at Bern, Aug. 18.

Argentina-Brazil. UNLIMITED. Signed at Rio de Janeiro, Sept. 7.

Colombia-Peru. Signed at Bogotá, Sept. 12.

Denmark-Great Britain. Signed at London, Oct. 25; in force until May 4, 1931.

Norway-Sweden. Signed at Stockholm, Oct. 26.

Denmark-Spain. Signed at Madrid, Dec. 1.

Denmark-Italy. UNLIMITED. Signed at Rome, Dec. 16.

1906

Belgium-Nicaragua. Signed at Guatemala City, Mar. 6.

1907

Denmark-Portugal. UNLIMITED. Signed at Copenhagen, Mar. 20.

Argentina-Italy. UNLIMITED. Signed at The Hague, Sept. 18.

Italy-Mexico. Signed at The Hague, Oct. 16.

1908

Honduras-Mexico. Signed at Mexico City, Mar. 24.

Great Britain-United States. Signed at Washington, Apr. 4.

Norway-United States. Signed at Washington, Apr. 4.

Portugal-United States. Signed at Washington, Apr. 6.

Netherlands-United States. Signed at Washington, May 2.

Japan-United States. Signed at Washington, May 5.

Denmark-United States. Signed at Washington, May 18.

Denmark-Norway. Signed at Copenhagen, Oct. 8.

Peru-United States. Signed at Washington, Dec. 5.

Norway-Portugal. Signed at Lisbon, Dec. 8.

1909

Ecuador-United States. Signed at Washington, Jan. 7.

Haiti-United States. Signed at Washington, Jan. 7.

United States-Uruguay. Signed at Washington, Jan. 9.

Brazil-Portugal. Signed at Petropolis, Mar. 25; effective by 5-year periods from May 29, 1911; 107 B. and F. S. P., 608.

Brazil-France. Signed at Petropolis, Apr. 7.

Brazil-Spain. Signed at Petropolis, Apr. 8.

Brazil-Mexico. Signed at Petropolis, Apr. 11.

Brazil-Honduras. Signed at Guatemala City, Apr. 26; in force by 5-year periods from Apr. 24, 1914; 105 B. and F. S. P., 937.

Brazil-Venezuela. Signed at Carácas, Apr. 30.

Brazil-Panama. Signed at Washington, May 1.

Brazil-Ecuador. Signed at Washington, May 13.

Brazil-Costa Rica. Signed at Washington, May 18.

Brazil-Cuba. Signed at Washington, June 10.

Brazil-Great Britain. Signed at Petropolis, June 18.

Bolivia-Brazil. Signed at Petropolis, June 25; in force by 10-year periods from May 10, 1912; 104 B. and F. S. P., 824.

Brazil-Norway. Signed at Kristiania, July 13.

Nicaragua-Portugal. Signed at Lisbon, July 17.

Brazil-China. Signed at Peking, Aug. 3.

Brazil-Salvador. Signed at Salvador, Sept. 3.

Italy-Netherlands. UNLIMITED. Signed at Rome, Nov. 20.

Brazil-Peru. Signed at Rio de Janeiro, Dec. 7; in force by 10-year periods from Jan. 13, 1912; 111 B. and F. S. P., 669.

Brazil-Sweden. Signed at Stockholm, Dec. 14; in force from May 24, 1916, for 10-year periods; 114 B. and F. S. P., 660.

Greece-Spain. Signed at Athens, Dec. (3) 16.

1910

Costa Rica-Italy. Signed at Rome, Jan. 8; 105 B. and F. S. P., 589.

Brazil-Haiti. Signed at Washington, Apr. 25; 104 B. and F. S. P., 831.

Brazil-Dominican Republic. Signed at Washington, Apr. 29; 108 B. and F. S. P., 429.

Russia-Spain. Signed at St. Petersburg, Aug. (2) 15.

Brazil-Russia. Signed at Rio de Janeiro, Aug. (13) 26.

Italy-Spain. Signed at San Sebastian, Sept. 2.

Italy-Russia. Signed at St. Petersburg, Oct. (14) 27.

Belgium-Italy. Signed at Brussels, Nov. 18.

Italy-Norway. Signed at Rome, Dec. 4.

1911

Brazil-Paraguay. Signed at Asunción, Feb. 24; in force from Sept. 6, 1914, for 10-year periods; 110 B. and F. S. P., 779.

Ecuador-Italy. Signed at Quito, Feb. 25.

Italy-Sweden. Signed at Stockholm, Apr. 13; in force by 10-year periods from signature; 105 B. and F. S. P., 678.

Italy-Paraguay. Signed at Asunción, May 11; in force from Aug. 2, 1914, by 5-year periods; 106 B. and F. S. P., 1088.

Bolivia-Italy. Signed at La Paz, May 17; in force from May 16, 1912, by 10-year periods; 105 B. and F. S. P., 569.

Argentina-Ecuador. Signed at Carácas, July 12; in force from July 22, 1923.

Argentina-Venezuela. Signed at Carácas, July 22; in force from May 24, 1924; Reg. No. 715; T. S., XXVIII, p. 288.

Brazil-Italy. Signed at Rio de Janeiro, Sept. 22; in force from July 28, 1913, for 10 years, then year by year; 104 B. and F. S. P., 833.

Brazil-Denmark. UNLIMITED. Signed at Copenhagen, Nov. 27; 105 B. and F. S. P., 587.

1912

Argentina-Colombia. UNLIMITED. Signed at Washington, Jan. 20; in force from Aug. 12, 1921; 113 B. and F. S. P., 876.

Peru-Venezuela. UNLIMITED. Signed at Carácas, Jan. 25; in force from June 9, 1914; 105 B. and F. S. P., 996.

Panama-Spain. Signed at Panama, July 25; in force from May 3, 1913, by 5-year periods.

1913

Guatemala-Italy. Signed at Guatemala, May 31; in force from Apr. 20, 1915, by 10-year periods; 107 B. and F. S. P., 905; T. G. A. III, 1.

Spain-Switzerland. Signed at Bern, June 19; in force for 10 years from Apr. 14, 1914, and for 5 years additional; 108 B. and F. S. P., 590.

Chile-Italy. Signed at Santiago, Aug. 8; in force from Mar. 27, 1914, for 10 years, then year to year; T. G. A., II, 79; 107 B. and F. S. P., 721.

Guatemala-United States. CONCILIATION. Signed at Washington, Sept. 20; in force from Oct. 13, 1914; Treaties, Conventions, etc., III, 2666.

Honduras-United States. CONCILIATION. Signed at Washington, Nov. 3; in force from July 27, 1916; Treaties, Conventions, etc., III, 2690.

Portugal-Sweden. Signed at Stockholm, Nov. 15; in force from July 8, 1914, for 5 years, then denunciable on 6 months' notice; 108 B. and F. S. P., 537.

Honduras-Italy. UNLIMITED. Signed at Guatemala, Dec. 8; in force from Jan. 20, 1915, by 10-year periods; T. G. A., III, 6; 107 B. and F. S. P., 918.

1914

Bolivia-United States. CONCILIATION. Signed at Washington, Jan. 22; in force from Jan. 8, 1915; Treaties, Conventions, etc., III, 2499.

Portugal-United States. CONCILIATION. Signed at Washington, Feb. 4; in force from Oct. 24, 1914; Treaties, Conventions, etc., III, 2809.

Costa Rica-United States. CONCILIATION. Signed at Washington, Feb. 13; in force from Nov. 12, 1914; Treaties, Conventions, etc., III, 2545.

United States-Venezuela. CONCILIATION. Signed at Washington, Mar. 21; in force from Feb. 12, 1921; Treaties, Conventions, etc., III, 2865.

Denmark-United States. CONCILIATION. Signed at Washington, Apr. 17; in force from Jan. 19, 1915; Treaties, Conventions, etc., III, 2556.

Italy-United States. CONCILIATION. Signed at Washington, May 5; in force from Mar. 19, 1915; Treaties, Conventions, etc., III, 2701.

Panama-Portugal. Signed at Panama, June 30; ratified by Panama, Nov. 21, 1914; in force from

Norway-United States. CONCILIATION. Signed at Washington, June 24; in force from Oct. 21, 1924; Treaties, Conventions, etc., III, 2745.

Argentina-France. Signed at Buenos Aires, July 3; ratifications exchanged at Buenos Aires, Oct. 4, 1916; 108 B. and F. S. P., 386; T. G. A., III, 27.

Peru-United States. CONCILIATION. Signed at Washington, July 14; in force from Mar. 4, 1915; Treaties, Conventions, etc., III, 2795.

Uruguay-United States. CONCILIATION. Signed at Washington,

July 20; in force from Feb. 24, 1915; Treaties, Conventions, etc., III, 2860.

Brazil-United States. CONCILIATION. Signed at Washington, July 24; in force from Oct. 28, 1916; Treaties, Conventions, etc., III, 2505.

Chile-United States. CONCILIATION. Signed at Washington, July 24; in force from Jan. 19, 1916; Treaties, Conventions, etc., III, 2509.

Paraguay-United States. CONCILIATION. Signed at Washington, Aug. 29; in force from Mar. 9, 1915; Treaties, Conventions, etc., III, 2788.

China-United States. CONCILIATION. Signed at Washington, Sept. 15; in force from Oct. 22, 1915; Treaties, Conventions, etc., III, 2514.

France-United States. CONCILIATION. Signed at Washington, Sept. 15; in force from Jan. 22, 1915. Treaties, Conventions, etc., III, 2587.

Great Britain-United States. CONCILIATION. Signed at Washington, Sept. 15; in force from Nov. 10, 1914; Treaties, Conventions, etc., III, 2642.

Spain-United States. CONCILIATION. Signed at Washington, Sept. 15; in force from Dec. 21, 1914; Treaties, Conventions, etc., III, 2841.

Russia-United States. CONCILIATION. Signed at Washington, Oct. 1; in force from Mar. 22, 1915; Treaties, Conventions, etc., III, 2815.

Ecuador-United States. CONCILIATION. Signed at Washington, Oct. 13; in force from Jan. 22, 1916; Treaties, Conventions, etc., III, 2575.

Sweden-United States. CONCILIATION. Signed at Washington, Oct. 13; in force from Jan. 11, 1915; Treaties, Conventions, etc., III, 2854.

Italy-Uruguay. Signed at Montevideo, 1914; ratifications exchanged at Montevideo, Dec. 16, 1918.

1915

Chile-Uruguay. CONCILIATION. Signed at Montevideo, Feb. 27; in force from Dec. 31, 1915, by 5-year periods; 109 B. and F. S. P., 885.

Argentina-Brazil-Chile. CONCILIATION. Signed at Buenos Aires May 25; ratified by Brazil.

China-Netherlands. UNLIMITED. Signed at The Hague, June 1; in force from Apr. 20, 1916, by 10-year periods; T. G. A., III, 25; 110 B. and F. S. P., 808.

Paraguay-Spain. Signed at Asunción, June 3; approved by Paraguayan Chamber of Deputies.

1916

Argentina-Spain. Signed at Buenos Aires, July 9; in force from Jan. 18, 1917, by 10-year periods; 110 B. and F. S. P., 773.

Brazil-Uruguay. UNLIMITED. Signed at Rio de Janeiro, Dec. 27; in force from June 10, 1918, by 5-year periods; 111 B. and F. S. P., 672.

1917

Bolivia-Uruguay. UNLIMITED. Signed at Montevideo, Apr. 27; approved by Uruguay, June 19, 1918; 5-year periods.

Peru-Uruguay. UNLIMITED. Signed at Lima, July 18; in force from Feb. 15, 1922, by 5-year periods; Reg. No. 384; T. S., XIV, 359.

1918

Great Britain-Uruguay. UNLIMITED. Signed at Montevideo,

Apr. 18; in force from Feb. 11, 1919; for 5 years, then terminable on 12 months' notice; 112 B. and F. S. P., 779; T. G. A., III, 32.

France-Uruguay. UNLIMITED. Signed at Montevideo, Apr. 18; in force from Oct. 22, 1918, by 5-year periods; T. G. A., III, 30; 111, B. and F. S. P., 742.

Brazil-Peru. Signed at Rio de Janeiro, July 11; ratified by Brazilian president, Dec. 23, 1918.

Colombia-Uruguay. Signed at Montevideo, Aug. 25; in force from

Bolivia-Peru. Signed at Lima, Sept. 30; in force from

Paraguay-Uruguay. UNLIMITED. Signed at Montevideo, Oct. 31; ratified by Paraguay, July 31, 1919, and by Uruguay, June 17, 1921.

Bolivia-Colombia. Signed at Bogotá, Nov. 13; in force from Feb. 21, 1923, by 10-year periods.

2. 1919–

POSTWAR PACIFIC SETTLEMENT TREATIES

Since the close of the World War the development of bipartite pacific settlement treaties has produced several types analyzed in some detail at p. 555*ff*. In the subjoined list an attempt has been made to indicate roughly the type of each treaty. Some of the old style arbitration treaties containing exceptions have been made. Those identified by the word "conciliation" are to be understood as creating a jurisdiction for the pacific settlement of all disputes not otherwise settled, and the contracting parties may, therefore, be regarded as completely providing for reference of all their disputes to a peaceful method. Treaties characterized by the words "conciliation and arbitration" combine in a single document both methods so as to cover all disputes. The words "judicial settlement" indicate that a definite jurisdiction has been assigned to the Permanent Court of International Justice by the treaty. The combination "conciliation, arbitration, judicial settlement" provides for all disputes and the treaty specifies the jurisdiction for each method.

References are, so far as possible, to the League of Nations Treaty Series, the registration number being given in addition to the volume and page reference. For Member States of the League of Nations no treaty or international engagement is binding until registration.

1919

[**Chile-Great Britain.**[1] CONCILIATION. Signed at Santiago, Mar. 28; in force from Oct. 23, 1919; 112 B. and F. S. P., 717.]

Brazil-Great Britain. CONCILIATION. Signed at Rio de Janeiro, Apr. 4; in force from Mar. 11, for 5 years, then terminable on 12 months' notice; 112 B. and F. S. P., 715; Reg. No. 116; T. S., V, p. 46.

Bolivia-Venezuela. ARBITRATION UNLIMITED. Signed at Carácas, Apr. 12; in force from Apr. 24, 1923; Reg. No.

[1] Abrogated April 4, 1922, because the object of the convention was sufficiently assured by the League of Nations, of which both states had become members (London *Gazette*, May 20, 1922, p. 4142).

1920

Chile-Sweden. CONCILIATION. Signed at Stockholm, Mar. 26; in force from May 3, 1921, by 5-year periods; Reg. No. 111; T. S., IV, 272.

1921

Ecuador-Venezuela. Signed at Quito, May 24; in force from Mar. 17, 1923.

Afghanistan-Persia. ARBITRATION UNLIMITED. Signed at Teheran, June 22; Art. X is general unlimited arbitral clause; in force from 25 Moharam 1342 (Sept. 8, 1923); Reg. No. 853; T. S., XXXIII, 299.

Argentina-Bolivia.[1] Signed at Aug. 23.

Germany-Switzerland. CONCILIATION AND ARBITRATION. Signed at Bern, Dec. 3; in force from May 25, 1922; Reg. No. 320; T. S., XII, 271.

Austria-Czechoslovakia. ARBITRATION AND JUDICIAL SETTLEMENT. Signed at Prague, Dec. 16; political agreement, Art. 7 of which is general arbitral or judicial settlement clause; in force from Mar. 15, 1922; Reg. No. 257; T. S., IX, 251.

1922

Spain-Uruguay. UNLIMITED. Signed at Madrid, Mar. 23; in force from Aug. 14, 1922; 116 B. and F. S. P., 994.

Great Britain-Iceland. Signed at London, May 1; convention renewing British-Danish convention of Oct. 25, 1905 (expired May 4, 1921), with application to Iceland; in force until May 4, 1926; Reg. No. 302; T. S. XII, 15.

1923

Costa Rica-Guatemala-Honduras-Nicaragua-Salvador. Signed at Washington, Feb. 7; convention establishing International Central American Tribunal; in force from ; Int. Con., No. 189, p. 644.

Costa Rica-Guatemala-Honduras-Nicaragua-Salvador-United States. CONCILIATION. Signed at Washington, Feb. 7; convention for establishment of international commissions of inquiry; in force from June 13, 1925, for Costa Rica, Guatemala, Honduras, Nicaragua and United States; U. S. Treaty Series, No. 717; Int. Con., No. 189, p. 678.

Sweden-Uruguay. Signed at Montevideo, Feb. 24; in force by 5-year periods from

Uruguay-Venezuela. UNLIMITED. Signed at Montevideo, Feb. 28; in force from June 15, 1925; Reg. No. 942; T. S., XXXVI, 451.

Peru-Venezuela. ARBITRATION. Signed at Lima, Mar. 14; in force from Aug. 9, 1924; Reg. No.

Austria-Hungary. ARBITRATION UNLIMITED. Signed at Budapest, Apr. 10; in force from July 29, 1923; Reg. No. 457; T. S., XVIII, p. 99.

Argentina-Brazil-Chile-Colombia-Cuba-Dominican Republic-Ecuador-Guatemala-Haiti-Honduras-Nicaragua-Panama-Paraguay-United States-Uruguay-Venezuela. CONCILIATION. Signed at Santiago, Chile, May 3; in force for ratifying states; Reg. No. 831; T. S., XXXIII, 25.

Esthonia-Latvia. ARBITRATION, JUDICIAL SETTLEMENT. Signed at Tallinn, Nov. 1; treaty of defen-

[1] *Cf.* Bulletin de l'Institut intermédiaire int., VI, 147.

sive alliance, Art. 6 of which is general arbitral or judicial settlement clause; in force from Feb. 21, 1924; Reg. No. 578; T. S., XXIII, 85.

Austria-Poland. ARBITRATION. Signed at Warsaw, Nov. 18; in force from Feb. 26, 1925, for 3 years; Reg. No. 888; T. S., XXXIV, 401.

1924

Czechoslovakia-France. ARBITRATION AND JUDICIAL SETTLEMENT. Signed at Paris, Jan. 25; treaty of alliance and friendship, Art. 6 of which is general arbitral and judicial settlement clause; in force from Mar. 4, 1924; Reg. No. 588; T. S., XXIII, 167.

Sweden-Switzerland. CONCILIATION. Signed at Stockholm, June 2; in force from Feb. 14, 1925, for 10 years; Reg. No. 844; T. S., XXXIII, 199.

Denmark-Switzerland. CONCILIATION. Signed at Copenhagen, June 6; in force from May 18, 1925, for 10 years; Reg. No. 873; T. S., XXXIV, 175.

Hungary-Switzerland. CONCILIATION AND ARBITRATION. Signed at Budapest, June 18; in force from May 13, 1925, for 10 years; Reg. No. 887; T. S., XXXIV, 387.

Brazil-Switzerland. JUDICIAL SETTLEMENT. Signed at Rio de Janeiro, June 23; in force from Apr. 7, 1925, for 10 years; Reg. No. 861; T. S., XXXIII, 415.

Sweden-United States. ARBITRATION. Signed at Washington, June 24; in force from Mar. 18, 1925, for 5 years; Reg. No. 851; T. S., XXXIII, 273.

Denmark-Finland. CONCILIATION. Signed at Stockholm, June 27; in force from Mar. 7, 1925, by 5-year periods; Reg. No. 839; T. S., XXXIII, 181.

Denmark-Norway. CONCILIATION. Signed at Stockholm, June 27; in force from Mar. 14, 1925, by 5-year periods; Reg. No. 842; T. S., XXXIII, 173.

Denmark-Sweden. CONCILIATION. Signed at Stockholm, June 27; in force from Mar. 7, 1925, by 5-year periods; Reg. No. 840; T. S., XXXIII, 149.

Finland-Norway. CONCILIATION. Signed at Stockholm, June 27; in force from Aug. 4, 1924, by 5-year periods; Reg. No. 751; T. S., XXIX, 403.

Finland-Sweden. CONCILIATION. Signed at Stockholm, June 27; in force from Sept. 13, 1924, by 5-year periods; Reg. No. 731; T. S., XXIX, 19.

Norway-Sweden. CONCILIATION. Signed at Stockholm, June 27; in force from Aug. 30, 1924, by 5-year periods; Reg. No. 717; T. S., XXVIII, 309.

Germany-Sweden. CONCILIATION AND ARBITRATION. Signed at Berlin, Aug. 29; in force from Dec. 21, 1925, for 10 years; Reg. No. 1036; T. S., XLII, 111.

Italy-Switzerland. CONCILIATION AND JUDICIAL SETTLEMENT. Signed at Rome, Sept. 20; in force from Jan. 29, 1925, for 10 years; Reg. No. 834; T. S., XXXIII, 91.

Austria-Switzerland. CONCILIATION. Signed at Vienna, Oct. 11; in force from May 1, 1925, for 10 years; Reg. No. 862; T. S., XXXIII, 423.

Salvador-Uruguay. ARBITRATION. Signed at Madrid, Nov. 7; ratified by Salvador May 28, 1925.

Argentina-Switzerland. ARBITRATION. Signed at Buenos Aires, Nov. 17.

Japan-Switzerland. JUDICIAL SETTLEMENT. Signed at Tokyo, Dec. 26; in force from Nov. 19, 1925, for 5 years; Reg. No. 1072; T. S., XLIII, 393.

1925

Esthonia - Finland - Latvia - Poland. CONCILIATION AND ARBITRATION. Signed at Helsingfors, Jan. 17; in force from Oct. 14, 1925, for 3 years; Reg. No. 991; T. S., XXXVIII, 357.

Belgium-Switzerland. CONCILIATION AND ARBITRATION. Signed at Brussels, Feb. 13; in force from for 10 years; Reg. No.

France-Siam. ARBITRATION, JUDICIAL SETTLEMENT, UNLIMITED. Signed at Paris, Feb. 14; treaty of friendship, commerce and navigation, Art. 2 of which is general clause; in force from Jan. 12, 1926, for 10 years, then year to year; Reg. No. 1055; T. S. XLIII, 193.

Poland-Switzerland. CONCILIATION AND ARBITRATION. Signed at Bern, Mar. 7; in force from June 11, 1926; Reg. No. 1209.

Finland-Germany. CONCILIATION AND ARBITRATION. Signed at Berlin, Mar. 14; in force from Feb. 27, 1926; Reg. No. 1070; T. S., XLIII, 347.

Latvia-Sweden. CONCILIATION. Signed at Riga, Mar. 28; in force from Sept. 24, 1925, by 5-year periods; Reg. No. 952; T. S., XXXVII, 131.

France-Switzerland. CONCILIATION AND JUDICIAL SETTLEMENT. Signed at Paris, Apr. 6; in force from for 10 years; Reg. No.

Czechoslovakia-Poland. CONCILIATION AND ARBITRATION. Signed at Warsaw, Apr. 23; in force from Apr. 24, 1926; Reg. No. 1171; T. S.,

Italy-Siam. ARBITRATION, JUDICIAL SETTLEMENT, UNLIMITED. Signed at Rome, May 9; treaty of friendship, commerce and navigation, Art. 2 of which is general clause; in force from , for 10 years, then year to year; Reg. No.

Esthonia-Sweden. CONCILIATION. Signed at Reval, May 29; in force from Feb. 25, 1926, for 5 years; Reg. No. 1123; T. S.,

Lithuania-Sweden. Signed at Kovno, June 11; in force from by 5-year periods; Reg. No.

Latvia-Lithuania. CONCILIATION AND ARBITRATION. Signed at Kaunas, July 1, 1925; protocol for convention on various subjects.

Norway-Siam. ARBITRATION, JUDICIAL SETTLEMENT, UNLIMITED. Signed at Oslo, July 16; treaty of friendship, commerce and navigation, Art. II of which is general clause; in force from for 10 years, then year to year; Reg. No.

Siam-Spain. ARBITRATION, JUDICIAL SETTLEMENT, UNLIMITED. Signed at Madrid, Aug. 3; treaty of friendship, commerce and navigation, Art. II of which is general clause; in force from July 28, 1926, until denunciation; Reg. No. 1303.

Esthonia-Germany. CONCILIATION AND ARBITRATION. Signed at Berlin, Aug. 10; in force from ; Reg. No.

Portugal-Spain. ARBITRATION, JUDICIAL SETTLEMENT, UNLIMITED. Signed at Lisbon, Aug. 14; treaty of friendship, commerce and navigation, Art. II of which is general clause; in force from July 31, 1926, for 10 years, then year to year; Reg. No. 1304.

Norway-Switzerland. CONCILIATION. Signed at Oslo, Aug. 21;

in force from July 8, 1926; Reg. No. 1224, T. S.

Denmark-Siam. ARBITRATION, JUDICIAL SETTLEMENT, UNLIMITED. Signed at Copenhagen, Sept. 1; treaty of friendship, commerce and navigation, Art. XXIII of which is general clause; in force from Mar. 28, 1926, for 10 years, then year to year; Reg. No. 1131.

Greece-Switzerland. Signed at Sept. 22; in force from ; Reg. No.

Switzerland-Turkey. Signed at Sept. ; in force from ; Reg. No.

Locarno (Belgium-France-Germany-Great Britain[1]-Italy[1]). CONCILIATION, ARBITRATION, JUDICIAL SETTLEMENT. Initialed at Locarno, Oct. 16; signed at London, Dec. 1; treaty of mutual guaranty, Art. 3[1] of which contains general clauses; in force from Sept. 14, 1926; Reg. No. 1292.

Belgium-Germany. CONCILIATION, ARBITRATION, JUDICIAL SETTLEMENT. Initialed at Locarno, Oct. 16; signed at London, Dec. 1; in force from Sept. 14, 1926; Reg. No. 1293.

Czechoslovakia-Germany. CONCILIATION, ARBITRATION, JUDICIAL SETTLEMENT. Initialed at Locarno, Oct. 16; signed at London, Dec. 1; in force from Sept. 14, 1926; Reg. No. 1296.

France-Germany. CONCILIATION, ARBITRATION, JUDICIAL SETTLEMENT. Initialed at Locarno, Oct. 16; signed at London, Dec. 1; in force from Sept. 14, 1926; Reg. No. 1294.

Germany-Poland. CONCILIATION, ARBITRATION, JUDICIAL SETTLEMENT. Initialed at Locarno, Oct. 16; signed at London, Dec. 1; in force from Sept. 14, 1926; Reg. No. 1295.

Poland-Sweden. ARBITRATION. Signed at Stockholm, Nov. 3; in force from by 3-year periods; Reg. No.

Great Britain-Siam. JUDICIAL SETTLEMENT. Signed at London, Nov. 25; in force from for 5 years and until 12 months' notice; Reg. No.

Norway-Sweden. PACIFIC SETTLEMENT. Signed at Oslo, Nov. 25; in force from ; Reg. No.

Netherlands-Switzerland. CONCILIATION AND ARBITRATION. Signed at The Hague, Dec. 12; in force from for 10 years; Reg. No.

Siam-Sweden. ARBITRATION, JUDICIAL SETTLEMENT, UNLIMITED. Stockholm, Dec. 19; treaty of friendship, commerce and navigation, Art. XX of which is general clause; in force from 1926, for 10 years, then year to year; Reg. No.

1926

Czechoslovakia-Sweden. CONCILIATION AND ARBITRATION. Signed at Prague, Jan. 2; in force from Apr. 29, 1926, for 10 years; Reg. No. 1159; T. S.

Denmark-Sweden. PACIFIC SETTLEMENT. Signed at Stockholm, Jan. 14; in force from July 20, 1926; Reg. No. 1235; T. S.

Denmark-Norway. PACIFIC SETTLEMENT. Signed at Copenhagen, Jan. 15; in force from ; Reg. No.

Finland-Sweden. PACIFIC SETTLEMENT. Signed at Helsing-

[1] "Nothing in the article . . . applies to Great Britain or Italy or imposes any obligation upon them" (Foreign Office, C 8900/112/18, 21st. Aug., 1926).

fors, Jan. 29; in force from May 28, 1926, by 20-year periods; Reg. No. 1192; T. S.

Denmark-Finland. PACIFIC SETTLEMENT. Signed at Helsingfors, Jan. 30; in force from July 26, 1926; Reg. No. 1242, T. S.

Finland-Norway. PACIFIC SETTLEMENT. Signed at Helsingfors, Feb. 3; in force from ; Reg. No.

Rumania-Switzerland. CONCILIATION, ARBITRATION, JUDICIAL SETTLEMENT. Signed at Bern, Feb. 3; in force from Aug. 27, 1926; Reg. No. 1306.

Liberia-United States. ARBITRATION. Signed at Monrovia, Feb. 10; in force from Sept. 27, 1926, for 5 years; Reg. No.

Austria-Czechoslovakia. CONCILIATION AND ARBITRATION. Signed at Vienna, Mar. 5; in force from May 31, 1926; Reg. No. 1240; T. S.

Austria-Poland. Signed at Apr. 10; in force from ; Reg. No.

Spain-Switzerland. CONCILIATION. Signed at Madrid, Apr. 20; in force from ; Reg. No.

Persia-Turkey. Signed at Teheran, Apr. 22; treaty of friendship and security, Art. 8: "The contracting parties shall determine upon the method to follow to settle ordinary differences which may arise between them and which can not be regulated through diplomatic channels."

Denmark-Poland. ARBITRATION. Signed at Copenhagen, Apr. 23; in force from ; Reg. No.

Germany-Soviet Union. Notes attached to political treaty signed at Berlin, Apr. 24, 1926: "4 . . . . In order to create a basis for disposing without friction of all questions arising between them, the two Governments regard it as desirable that they should immediately embark upon discussions for the conclusion of a general treaty for the peaceful solution of any conflicts that may happen to arise between the two parties, when special attention shall be given to the possibilities of the process of agreement and arbitration."

Belgium-Sweden. Signed at Apr. 30; in force from for 10 years to supersede Nov. 30, 1904; Reg. No.

Germany-Netherlands. Signed at The Hague, May 20; in force from ; Reg. No.

Austria-Sweden. Signed at May 28; in force from ; Reg. No.

Denmark-Germany. CONCILIATION AND ARBITRATION. Signed at Berlin, June 3; in force from ; Reg. No.

Austria-Serb-Croat-Slovene State. Signed at ; in force from ; Reg. No.

Denmark-France. CONCILIATION AND ARBITRATION. Signed at Paris, July 5; to supersede convention of Aug. 9, 1911 (104 B. and F. S. P., 906); in force from

Italy-Spain. CONCILIATION, ARBITRATION, JUDICIAL SETTLEMENT. Signed at Madrid, Aug. 7; in force from Oct. 16, 1926; Reg. No.

Greece-Serb-Croat-Slovene State. FRIENDSHIP AND CONCILIATION. Signed at Athens, Aug. 17; in force from

Italy-Rumania. ARBITRATION. UNLIMITED. Signed at Rome, Sept. 17; treaty of amity and collaboration, Art. 4 of which is general arbitral clause; in force by 5-year periods from

Poland-Serb-Croat-Slovene State. AMITY AND ARBITRATION. Signed at Geneva, Sept. 18; in force from ; Reg. No.

Lithuania-Soviet Union. CONCILIATION. Signed at Moscow, Sept. 28; treaty of neutrality, Art. 5 of which states that in the event of a conflict between them, the contracting parties agree to establish conciliation commissions if they should not succeed in settling the conflict by diplomatic means. Details are to be determined in a supplementary agreement.

CHRONOLOGICAL SUMMARY.

1828	1	1904	21
1829	1	1905	19
1842	1	1906	1
1848	1	1907	3
1856	1	1908	10
1863	1	1909	23
1870	1	1910	9
1873	1	1911	9
1874	2	1912	3
1876	1	1913	7
1880	1	1914	22
1882	1	1915	4
1883	4	1916	2
1884	1	1917	2
1887	1	1918	7
1888	2	1919	2 (3)
1890	2	1920	1
1893	1	1921	5
1894	3	1922	2
1895	4	1923	9
1897	1	1924	18
1899	3	1925	30
1901	1	1926	25
1902	10		
1903	3		283

SUMMARY BY COUNTRIES.

NOTE: The inclusion of the Central American and Pan American multipartite treaties of 1923 exaggerates the figures on the strictly bipartite basis, adding 14 to the number of the United States, for instance. For purposes of comparison, 54 should be added to the total of each League of Nations member (*Cf.* p. 585 *supra*).

Afghanistan (1) — Persia (1921).

Argentina (33) — Bolivia (1902, 1921); Brazil (1828, 1905, 1915, 1923); Chile (1902, 1915, 1923); Colombia (1912, 1923); Cuba (1923); Dominican Republic (1923); Ecuador (1911, 1923); France (1914); Guatemala (1923); Haiti (1923); Honduras (1923); Italy (1907); Nicaragua (1923); Panama (1923); Paraguay (1876, 1899, 1923); Peru (1874); Spain (1916); Switzerland (1924); United States (1923); Uruguay (1899, 1923); Venezuela (1911, 1923).

Australia — See Great Britain, note.

Austria (8) — Czechoslovakia (1921, 1926); Hungary (1923); Poland (1923, 1926); Serb-Croat-Slovene State (1926); Sweden (1926); Switzerland (1924).

Belgium (15) — Denmark (1905); Ecuador (1887); Germany (1925, 1925); Greece (1905); Italy (1910); Nicaragua (1906); Rumania (1905); Russia (1904) (see Soviet Union); Spain (1905); Sweden (1904, 1926); Switzerland (1904, 1925); Venezuela (1884).

Bolivia (13) — Argentina (1902, 1921); Brazil (1909); Colombia (1918); Italy (1911); Peru (1863, 1873, 1901, 1918); Spain (1902); United States (1914); Uruguay (1917); Venezuela (1919).

Brazil (42) — Argentina (1828, 1905, 1915, 1923); Bolivia (1909); Chile (1899, 1915, 1923); China (1909); Colombia (1923); Costa Rica (1909); Cuba (1909, 1923); Denmark (1911); Dominican Republic (1910, 1923); Ecuador (1909, 1923); France (1909); Great Britain (1909, 1919); Guatemala (1923); Haiti (1910, 1923); Honduras (1909, 1923); Italy (1911); Mexico (1909); Nicaragua (1923); Norway (1909); Panama (1909); Paraguay (1911); Peru (1909, 1918); Portugal (1909); Russia (1910) (see Soviet Union); Salvador (1909); Spain (1909); Sweden (1909); Switzerland (1924); Uruguay (1916); Venezuela (1909).

Canada — See Great Britain, note.

Chile (23) — Argentina (1902, 1915, 1923); Brazil (1899, 1915, 1923); Colombia (1923); Cuba (1923); Dominican Republic (1923); Ecuador (1923); Great Britain (1919); Guatemala (1923); Haiti (1923); Honduras (1923); Italy (1913); Nicaragua (1923); Panama (1923); Paraguay (1923); Sweden (1920); United States (1923); Uruguay (1915, 1923); Venezuela (1923).

China (3) — Brazil (1909); Netherlands (1915); United States (1914).

Colombia (26) — Argentina (1912, 1923); Bolivia (1918); Brazil (1923); Chile (1923); Dominican Republic (1923); Ecuador (1856, 1905, 1923); Guatemala (1923); Haiti (1923); Honduras (1923); Nicaragua (1923); Panama (1923); Paraguay (1923); Peru (1829, 1870, 1905); Salvador (1880); Spain (1894, 1902); United States (1923); Uruguay (1918, 1923); Venezuela (1842, 1923).

Costa Rica (10) — Brazil (1909); Guatemala (1895, 1923); Honduras (1895, 1923); Italy (1910); Nicaragua (1923); Salvador (1895, 1923); United States (1914).

Cuba (16) — Argentina (1923); Brazil (1909, 1923); Chile (1923); Dominican Republic (1923); Ecuador (1923); Guatemala (1923); Haiti (1923); Honduras (1923); Italy (1903); Nicaragua (1923); Panama (1923); Paraguay (1923); United States (1923); Uruguay (1923); Venezuela (1923).

Czechoslovakia (6) — Austria (1921, 1926); France (1924); Germany (1925); Poland (1925); Sweden (1926).

Denmark (22) — Belgium (1905); Brazil (1911); Finland (1924, 1926); France (1926); Germany (1926); Great Britain (1905); Italy (1905); Netherlands (1904); Norway (1908, 1924, 1926); Poland (1926); Portugal (1907); Russia (1905) (see Soviet Union); Siam (1925); Spain (1905); Sweden (1924, 1926); Switzerland (1924); United States (1908, 1914).

Dominican Republic (17) — Argentina (1923); Brazil (1910, 1923); Chile (1923); Colombia (1923); Cuba (1923); Ecuador (1923); Guatemala (1923); Haiti (1923); Honduras (1923); Nicaragua (1923); Panama (1923); Paraguay (1923); Spain (1902); United States (1923); Uruguay (1923); Venezuela (1923).

Ecuador (27) — Argentina (1911, 1923); Belgium (1887); Brazil (1909, 1923); Chile (1923); Colombia (1856, 1905, 1923); Cuba (1923); Dominican Republic (1923); Guatemala (1923); Haiti (1923); Honduras (1923); Italy (1911); Nicaragua (1923); Panama (1923); Paraguay (1923); Salvador (1890); Spain (1888); Switzerland (1888); United States (1909, 1914, 1923); Uruguay (1923); Venezuela (1921, 1923).

Esthonia (6) — Finland (1925); Germany (1925); Latvia (1923, 1925); Poland (1925); Sweden (1925).

Finland (9) — Denmark (1924, 1926); Esthonia (1925); Germany (1925); Latvia (1925); Norway (1924, 1926); Sweden (1924, 1926).

France (17) — Argentina (1914); Belgium (1925); Brazil (1909); Czechoslovakia (1924); Denmark (1926); Germany (1925, 1925); Great Britain (1903); Italy (1903); Netherlands (1904); Norway (1904); Siam (1925); Spain (1904); Sweden (1904); Switzerland (1925); United States (1914); Uruguay (1918).

Germany (13) — Belgium (1925, 1925); Czechoslovakia (1925); Denmark (1926); Esthonia (1925); Finland (1925); France (1925, 1925); Netherlands (1926); Poland (1925); Soviet Union (1926); Sweden (1924); Switzerland (1921).

Great Britain (16) — Brazil (1909, 1919); Chile (1919); Denmark (1905); France (1903); Iceland (1922); Italy (1904); Netherlands (1905); Norway (1904); Portugal (1904); Siam (1925); Spain (1904); Sweden (1904); United States (1908, 1914); Uruguay (1918).

NOTE: British arbitration engagements usually apply to the British Commonwealth of Nations and are to be regarded as applicable to the Commonwealth of Australia, the Dominion of Canada, India, Irish Free State, the Dominion of New Zealand and the Union of South Africa.

Greece (4) — Belgium (1905); Serb-Croat-Slovene State (1926); Spain (1909); Switzerland (1925).

Guatemala (23) — Argentina (1923); Brazil (1923); Chile (1923); Colombia (1923); Costa Rica (1895, 1923); Cuba (1923); Dominican Republic (1923); Ecuador (1923); Haiti (1923); Honduras (1895, 1923); Italy (1913); Nicaragua (1874, 1923); Panama (1923); Paraguay (1923); Salvador (1890); Spain (1902); United States (1913, 1923); Uruguay (1923); Venezuela (1923).

Haiti (16) — Argentina (1923); Brazil (1910, 1923); Colombia (1923); Cuba (1923); Dominican Republic (1923); Ecuador (1923); Guatemala (1923); Honduras (1923); Nicaragua (1923); Panama (1923); Paraguay (1923); United States (1909, 1923); Uruguay (1923); Venezuela (1923).

Honduras (25) — Argentina (1923); Brazil (1909, 1923); Chile (1923); Colombia (1923); Costa Rica (1895, 1923); Cuba (1923); Dominican Republic (1923); Ecuador (1923); Guatemala (1895, 1923); Haiti (1923); Italy (1913); Mexico (1908); Nicaragua (1923); Panama (1923); Paraguay (1923); Salvador (1923); Spain (1894, 1905); United States (1913, 1923); Uruguay (1923); Venezuela (1923).

Hungary (2) — Austria (1923); Switzerland (1924).

Iceland (1) — Great Britain (1922).

India — See Great Britain, note.

Irish Free State — See Great Britain, note.

Italy (29) — Argentina (1907); Belgium (1910); Bolivia (1911); Brazil (1911); Chile (1913); Costa Rica (1910); Cuba (1903); Denmark (1905); Ecuador (1911); France (1903); Great Britain (1904); Guatemala (1913); Honduras (1913); Mexico (1907); Netherlands (1909); Norway (1910); Paraguay (1911); Peru (1905); Portugal (1905); Rumania (1926); Russia (1910) (see Soviet Union); Siam

(1925); Spain (1910, 1926); Sweden (1911); Switzerland (1904, 1924); United States (1914); Uruguay (1914).

Japan (2) — Switzerland (1924); United States (1908).

Latvia (6) — Esthonia (1923, 1925); Finland (1925); Lithuania (1925); Poland (1925); Sweden (1925).

Liberia (1) — United States (1926).

Lithuania (3) — Latvia (1925); Soviet Union (1926); Sweden (1925).

Mexico (7) — Brazil (1909); Honduras (1908); Italy (1907); Persia (1902); Salvador (1893); Spain (1902); United States (1848).

Netherlands (10) — China (1915); Denmark (1904); France (1904); Germany (1926); Great Britain (1905); Italy (1909); Portugal (1894, 1904); Switzerland (1925); United States (1908).

New Zealand — See Great Britain, note.

Nicaragua (22) — Argentina (1923); Belgium (1906); Brazil (1923); Chile (1923); Colombia (1923); Costa Rica (1923); Cuba (1923); Dominican Republic (1923); Ecuador (1923); Guatemala (1874, 1923); Haiti (1923); Honduras (1923); Panama (1923); Paraguay (1923); Portugal (1909); Salvador (1883, 1923); Spain (1904); United States (1923); Uruguay (1923); Venezuela (1923).

Norway (20) — Brazil (1909); Denmark (1908, 1924, 1926); Finland (1924, 1926); France (1904); Great Britain (1904); Italy (1910); Portugal (1908); Russia (1904) (see Soviet Union); Siam (1925), Spain (1905); Sweden (1905, 1924, 1925); Switzerland (1904, 1925); United States (1908, 1914).

Panama (17) — Argentina (1923); Brazil (1909); Chile (1923); Colombia (1923); Cuba (1923); Dominican Republic (1923); Ecuador (1923); Guatemala (1923); Haiti (1923); Honduras (1923); Nicaragua (1923); Paraguay (1923); Portugal (1914); Spain (1912); United States (1923); Uruguay (1923); Venezuela (1923).

Paraguay (21) — Argentina (1876, 1899, 1923); Brazil (1911); Chile (1923); Colombia (1923); Cuba (1923); Dominican Republic (1923); Ecuador (1923); Guatemala (1923); Haiti (1923); Honduras (1923); Italy (1911); Nicaragua (1923); Panama (1923); Spain (1915); United States (1923); Uruguay (1883, 1918, 1923); Venezuela (1923).

Persia (3) — Afghanistan (1921); Mexico (1902); Turkey (1926).

Peru (17) — Argentina (1874); Bolivia (1863, 1873, 1901, 1918); Brazil (1909, 1918); Colombia (1829, 1870, 1905); Italy (1905); Spain (1897); United States (1908, 1914); Uruguay (1917); Venezuela (1912, 1923).

Poland (9) — Austria (1926); Czechoslovakia (1925); Denmark (1926); Esthonia (1925); Germany (1925); Latvia (1925); Serb-Croat-Slovene State (1926); Sweden (1925); Switzerland (1925).

Portugal (15) — Brazil (1909); Denmark (1907); Great Britain (1904); Italy (1905); Netherlands (1894, 1904); Nicaragua (1909); Norway (1908); Panama (1914); Spain (1904, 1925); Sweden (1913); Switzerland (1905); United States (1908, 1914).

Rumania (3) — Belgium (1905); Italy (1926); Switzerland (1926).

Russia — See Soviet Union.

Salvador (14) — Brazil (1909); Colombia (1880); Costa Rica (1895, 1923); Ecuador (1890); Guatemala (1890); Honduras (1923); Mexico (1893); Nicaragua (1883, 1923); Spain (1902); Switzerland (1883); Uruguay (1924); Venezuela (1883).

Serb-Croat-Slovene State (3) — Austria (1926); Greece (1926); Poland (1926).

Siam (7) — Denmark (1925); France (1925); Great Britain (1925); Italy (1925); Norway (1925); Spain (1925); Sweden (1925).

South Africa — See Great Britain, note.

Soviet Union (2) — Germany (1926); Lithuania (1926).

Russia (8) — Belgium (1904); Brazil (1910); Denmark (1905); Italy (1910); Norway (1904); Spain (1910); Sweden (1904); United States (1914).

NOTE: The exact legal status of Russian treaties is uncertain. In most cases consideration of their application between the Soviet Union and the other party has not been definitely given.

Spain (34) — Argentina (1916); Belgium (1905); Bolivia (1902); Brazil (1909); Colombia (1894, 1902); Denmark (1905); Dominican Republic (1902); Ecuador (1888); France (1904); Great Britain (1904); Greece (1909); Guatemala (1902); Honduras (1894, 1905); Italy (1910, 1926); Mexico (1902); Nicaragua (1904); Norway (1905); Panama (1912); Peru (1897); Portugal (1904, 1925); Russia (1910) (see Soviet Union); Salvador (1902); Siam (1925); Sweden (1905); Switzerland (1913, 1926); United States (1914); Uruguay (1902, 1922); Venezuela (1882).

Sweden (30) — Austria (1926); Belgium (1904, 1926); Brazil (1909); Chile (1920); Czechoslovakia (1926); Denmark (1924, 1926); Esthonia (1925); Finland (1924, 1926); France (1904); Germany (1924); Great Britain (1904); Italy (1911); Latvia (1925); Lithuania (1925); Norway (1905, 1924, 1925); Poland (1925); Portugal (1913); Russia (1904) (see Soviet Union); Siam (1925); Spain (1905); Switzerland (1904, 1924); United States (1914, 1924); Uruguay (1923).

Switzerland (26) — Argentina (1924); Austria (1924); Belgium (1904, 1925); Brazil (1924); Denmark (1924); Ecuador (1888); France (1925); Germany (1921); Greece (1925); Hungary (1924); Italy

(1904, 1924); Japan (1924); Netherlands (1925); Norway (1904, 1925); Poland (1925); Portugal (1905); Rumania (1926); Salvador (1883); Spain (1913, 1926); Sweden (1904, 1924); Turkey (1925).

Turkey (2) — Persia (1926); Switzerland (1925).

United States (45) — Argentina (1923); Bolivia (1914); Chile (1923); China (1914); Colombia (1923); Costa Rica (1914); Cuba (1923); Denmark (1908, 1914); Dominican Republic (1923); Ecuador (1909, 1914, 1923); France (1914); Great Britain (1908, 1914); Guatemala (1913, 1923); Haiti (1909, 1923); Honduras (1913, 1923); Italy (1914); Japan (1908); Liberia (1926); Mexico (1848); Netherlands (1908); Nicaragua (1923); Norway (1908, 1914); Panama (1923); Paraguay (1923); Peru (1908, 1914); Portugal (1908, 1914); Russia (1914) (see Soviet Union); Spain (1914); Sweden (1914, 1924); Uruguay (1909, 1914, 1923); Venezuela (1914, 1923).

Uruguay (31) — Argentina (1899, 1923); Bolivia (1917); Brazil (1916); Chile (1915, 1923); Colombia (1918, 1923); Cuba (1923); Dominican Republic (1923); Ecuador (1923); France (1918); Great Britain (1918); Guatemala (1923); Haiti (1923); Honduras (1923); Italy (1914); Nicaragua (1923); Panama (1923); Paraguay (1883, 1918, 1923); Peru (1917); Salvador (1924); Spain (1902, 1922); Sweden (1923); United States (1909, 1914, 1923); Venezuela (1923).

Venezuela (25) — Argentina (1911, 1923); Belgium (1884); Bolivia (1919); Brazil (1909); Chile (1923); Colombia (1842, 1923); Cuba (1923); Dominican Republic (1923); Ecuador (1921, 1923); Guatemala (1923); Haiti (1923); Honduras (1923); Nicaragua (1923); Panama (1923); Paraguay (1923); Peru (1912, 1923); Salvador (1883); Spain (1882); United States (1914, 1923); Uruguay (1923).

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AMERICA

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PERMANENT COURT OF INTERNATIONAL JUSTICE

II

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The corporation is constituted for the purpose of educating the people of all nations to a full knowledge of the waste and destructiveness of war, its evil effects on present social conditions and on the well-being of future generations, and to promote international justice and the brotherhood of man; and, generally, by every practical means to promote peace and good will among all mankind. — *By-laws of the Corporation.*

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CONTENTS

PAGE

Introduction 613

I. Resolution granting favorable advice and consent of the Senate to the adhesion on the part of the United States to the Protocol of December 16, 1920, with reservations. Agreed to by the Senate, January 27, 1926 615

II. The Secretary of State to the Secretary-General of the League of Nations 617

III. Letter dated March 29, 1926, from the Secretary-General of the League of Nations to the Secretary of State of the United States of America . . 618

IV. The American Chargé d'Affaires at Bern, Alan F. Winslow, to the Secretary-General of the League of Nations 621

V. Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice. Final Act of the Conference 623

Annex A. Extract from the Revised Rules of Court of the Permanent Court of International Justice 632

Annex B. Preliminary Draft of a Protocol 634

VI. Permanent Court of International Justice. Protocol of Signature 638

Optional Clause 639

Statute for the Permanent Court of International Justiee provided for by Art. 14 of the Covenant of the League of Nations 644

STATES ACCEPTING THE COURT STATUTE — 50

States Signatory	Date of Ratification	States Signatory	Date of Ratification
Abyssinia	July 16, 1926	Irish Free State	August 21, 1926[1]
Albania	July 13, 1921	Italy	June 20, 1921
Australia	August 4, 1921	Japan	November 16, 1921
Austria	July 23, 1921	Latvia	February 12, 1924
Belgium	August 29, 1921	Liberia	
Bolivia		Lithuania	May 16, 1922
Brazil	November 1, 1921	Luxemburg	
Bulgaria	August 12, 1921	Netherlands	August 6, 1921
Canada	August 4, 1921	New Zealand	August 4, 1921
Chile		Norway	August 20, 1921
China	May 13, 1922	Panama	
Colombia		Paraguay	
Costa Rica		Persia	
Cuba	January 12, 1922	Poland	August 26, 1921
Czechoslovakia	September 2, 1921	Portugal	October 8, 1921
Denmark	June 13, 1921	Rumania	August 8, 1921
Dominican Republic		Salvador	
Esthonia	May 2, 1923	Serb-Croat-Slovene State	August 12, 1921
Finland	April 6, 1922	Siam	February 27, 1922
France	August 7, 1921	South Africa	August 4, 1921
Great Britain	August 4, 1921	Spain	August 30, 1921
Greece	October 3, 1921	Sweden	February 21, 1921
Haiti	September 7, 1921	Switzerland	July 25, 1921
Hungary	November 20, 1925	Uruguay	September 7, 1921
India	August 4, 1921	Venezuela	December 2, 1921

ACCEPTANCE OF THE OPTIONAL CLAUSE — 25

States Signatory	Date of Ratification if made[2]	States Signatory	Date of Ratification if made[2]
Abyssinia	June 16, 1926	Haiti	
Austria	March 14, 1922	Latvia	December 28, 1923
Belgium	March 10, 1926	Liberia	
Brazil	November 1, 1921	Lithuania	May 16, 1922
Bulgaria	August 12, 1921	Luxemburg	
China		Netherlands	August 6, 1921
Costa Rica		Norway	October 3, 1921
Denmark	June 13, 1921	Panama	
Dominican Republic		Portugal	
Esthonia	May 2, 1923	Salvador	
Finland	April 6, 1922	Sweden	
France		Switzerland	July 25, 1921
		Uruguay	

[1] Letter notifying "that the Irish Free State is to be included among those members of the League of Nations which have ratified."

[2] Ratification of the Optional Clause is not required by the document itself.

AMERICA AND THE PERMANENT COURT OF INTERNATIONAL JUSTICE

INTRODUCTION

The Senate of the United States on January 27, 1926, agreed to a resolution with reference to American adherence to the Permanent Court of International Justice, in response to a message of the President dated February 24, 1923. On March 2, 1926, the Secretary of State, in accordance with that resolution, notified states signatory of the Protocol of Signature of December 16, 1920, of the Statute of the Permanent Court of International Justice of the conditions framed by the Senate for the adherence of the United States to that protocol. At the same time the Secretary-General of the League of Nations was similarly informed of the Senate conditions by the Secretary of State.

The Council of the League of Nations on March 18 passed a resolution suggesting to the states signatory to the Protocol that a conference of their delegates be held to decide in concert as to the replies to be given to the American conditions. The Government of the United States was invited to participate in this conference, the invitation being declined on April 17, 1926.

The conference of 40 states signatory of the Protocol of Signature of the Statute of the Permanent Court of International Justice met at Geneva in the building of the International Labor Office, September 1–23, 1926. In the course of seven plenary sessions and much committee and subcommittee work, the conference produced a final act, immediately signed by the delegates of 35 states, in which the conference formulated conclusions intended to be the basis of the replies of the signatory states to the letter of the Secretary of State of the United States.

The United States Government up to December 1 had not had occasion to express itself on the proposals of the conference, which had not been officially communicated to it.

The present publication contains the documents described above. It supplements the following publications in this series: "America and the Permanent Court of International Justice," Vol. V, No. 5; "The World Court," Vol. VI, No. 1; "The Court Situation," Vol. VIII, No. 4, p. 207–216; "The Work of the Permanent Court of International Justice during Four Years," Vol. IX, No. 2.

I. Resolution granting Favorable Advice and Consent of the Senate to the Adhesion on the Part of the United States to the Protocol of December 16, 1920, with Reservations.[1] Agreed to by the Senate, January 27, 1926.

Whereas the President, under date of February 24, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17, 1923, asking the favorable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the optional clause for compulsory jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence: Therefore, be it

Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December 16, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the optional clause for compulsory jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely:

1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the treaty of Versailles.[2]

2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other states, members, respectively, of the

[1] S. Res. 5, 69th Congress, 1st session, as modified in open executive session, January 16 (calendar day, January 23), 1926, and passed January 16 (calendar day, January 27), 1926.

[2] The resolution as finally adopted was based upon S. Res. 5 and S. Res. 6, 69th Cong., 1st sess., introduced on March 5 respectively by Senator Swanson, Democrat, and Senator Willis, Republican. In their text No. 1 read: " . . . or the assumption of any obligations by the United States under the Covenant of the League of Nations constituting Part I of the Treaty of Versailles."

Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

4. That the United States may at any time withdraw its adherence to the said Protocol [1] and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

5. That the Court shall not render any advisory opinion except publicly after due notice to all states adhering to the Court and to all interested states and after public hearing or opportunity for hearing given to any state concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.[2]

The signature of the United States to the said Protocol shall not be affixed until the powers signatory to such Protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol.

Resolved further, As a part of this act of ratification that the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other state or states can be had only by agreement thereto through general or special treaties concluded between the parties in dispute; and

[1] A provision as to withdrawal was not included in either the Swanson or Willis resolution.

[2] The original Swanson reservation read as follows:

"5. That the United States shall be in no manner bound by any advisory opinion of the Permanent Court of International Justice not rendered pursuant to a request in which it, the United States, shall expressly join in accordance with the statute for the said court adjoined to the protocol of signature of the same to which the United States shall become signatory."

The original Willis reservation read as follows:

"5. That the United States shall not be bound by advisory opinions which may be rendered by the Court upon questions which the United States has not voluntarily submitted for its judgment."

Resolved further, That adherence to the said Protocol and Statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

II. The Secretary of State to the Secretary-General of the League of Nations[1]

Department of State.
Washington, March 2, 1926.

To the Secretary-General:

Sir:

I have the honor to refer to the communication of this Department, dated August 15, 1921,[2] acknowledging the receipt of a certified copy of the Protocol of Signature relating to the Statute of the Permanent Court of International Justice, and take pleasure in informing you that the Senate of the United States of America, on January 27, 1926, gave its advice and consent to the adherence on the part of the United States to the Protocol of Signature of the Statute for the Permanent Court of International Justice, dated December 16, 1920, and the adjoined Statute for the Permanent Court of International Justice, without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction, contained in the said Statute on the condition of the acceptance by the powers signatory to the Protocol of the conditions, reservations and understandings contained in the Senate Resolution which reads as follows: —

[Here follows the Senate resolution as above.]

I have the honor, therefore, to inform you that the signature of the United States will not be affixed to the said Protocol until the Governments of the powers signatory thereto shall have signified in writing to the Government of the United States their acceptance of the foregoing conditions, reservations and

[1] Reprinted from League of Nations, *Official Journal*, VII, p. 628. Communicated to the Council and Members of the League of Nations, March 17, 1926.

[2] Not reprinted.

understandings as a part and a condition to the adherence of the United States to the said Protocol and Statute.

I have addressed a communication to the representative of each of the Governments of the powers signatories of the Protocol asking these several Governments to be good enough to ascertain and to inform me in writing whether they will accept the conditions, reservations and understandings contained in the resolution as a part and condition of the adherence of the United States to the said protocol and statute.

Accept, Sir, the assurance of my high consideration.

(Signed) FRANK B. KELLOGG.

III. LETTER DATED MARCH 29, 1926, FROM THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA [1]

I have the honor to refer to your letter of March 2, 1926, communicating to me, as Secretary-General of the League of Nations, the terms of the resolution adopted by the Senate of the United States of America on January 27, 1926, with regard to the eventual adhesion of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and informing me that you had addressed a communication to the representatives of the Governments of the states signatories of that Protocol inquiring whether they would accept the conditions, reservations and understandings required by the Senate's resolution. As I informed you in my letter of acknowledgment dated March 18, 1926,[2] I communicated copies of your letter to the Governments of the Members of the League.

I now take pleasure in informing you that, at a meeting of the Council of the League of Nations held on March 18, 1926, the British representative put before the Council, in regard to the subject dealt with in your letter, a statement and proposals which were adopted by the Council.

I have the honor to inclose an extract from the Council's Minutes containing the statement and proposals to which I refer.

You will observe from this extract that the Council, desirous of facilitating common action by the signatories of the Protocol

[1] *Official Journal*, VII, p. 722. [2] Not reprinted.

in question with regard to the adhesion of the United States to that instrument, and after consideration of the technical aspects of the subject, has taken a decision that invitations shall be issued to the Governments of the States actually signatories of the Protocol and to the Government of the United States to appoint delegations to meet in Geneva on September 1 of the current year for the purpose of discussing any questions which it may be proper for them to discuss in this connection, and for the purpose of framing any new agreement which may be found necessary to give effect to the special conditions on which the United States are prepared to adhere to the Protocol.

Under the terms of the Council's decision, the invitation to the meeting is addressed to the signatory states in their capacity as such signatories and to the United States of America. I have conveyed the invitation to the Governments of the former states.

I have now the honor to convey to you the above invitation of the Council for consideration by your Government, and to request that you will be so good as to inform me whether your Government will find it possible to be represented at the meeting in question.

(Signed) ERIC DRUMMOND,
Secretary-General.

Inclosure in No. III

Adhesion of the United States to the Protocol of the Permanent Court of International Justice

[Extract from the Minutes of the Seventh Meeting of the Thirty-Ninth Session of the Council of the League of Nations, held at Geneva on March 18, 1926, (*Official Journal*, VII, p. 535).]

Sir Austen Chamberlain reminded the Council of the letter received by the Secretary-General from the Secretary of State in Washington communicating the terms on which the United States of America, with the consent of the Senate, were prepared to adhere to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

He then read the following statement:

The Senate resolution of January 27, 1926, stipulates that the signature of the United States to the Protocol of December 16, 1920, shall not be affixed until the powers signatory to that Protocol shall have indicated by an exchange of notes their acceptance of the first five paragraphs of that resolution. The Protocol of 1920 is a multilateral instrument to which all the signatories are parties, and the special conditions on which the United States desire to accede to it should also be embodied in a multilateral instrument. They can not appropriately be embodied in a series of separate exchanges of notes.

The terms of some of the first five paragraphs of the Senate resolution affect in certain respects the rights of the states which have ratified the Protocol of December 16, 1920, and it is not usual that rights established by an instrument which has been ratified should be varied by a mere exchange of notes.

The terms of the fifth paragraph of the Senate resolution necessitate further examination before they could safely be accepted by the states which are parties to the Protocol of 1920. This paragraph is capable of bearing an interpretation which would hamper the work of the Council and prejudice the rights of Members of the League, but it is not clear that it was intended to bear any such meaning. The correct interpretation of this paragraph of the resolution should be the subject of discussion and agreement with the United States Government.

It should not be difficult to frame a new agreement giving satisfaction to the wishes of the United States Government if an opportunity could be obtained for discussing with a representative of that Government the various questions raised by the terms of the Senate resolution. To any such new agreement the states which have signed the Protocol of December 16, 1920, and the United States Government would be parties.

I suggest that the most convenient course would be to propose to all the Governments which have received from the United States Government a copy of the Senate resolution that a reply should be made indicating the difficulty of proceeding by way of a mere exchange of notes and the need of a general agreement. An invitation might also be addressed by the Council to all these Governments and to the Government of the United States to appoint a delegation to participate in the discussions as proposed above and in the framing of a new agreement at a meeting to be held here on September 1 of the current year.

The Council adopted the proposals of the British representative.

IV. The American Chargé d'Affaires at Bern, Alan F. Winslow, to the Secretary-General of the League of Nations[1]

Sir:

I have the honor to acknowledge your communication of March 29, 1926, in which you inclose an extract from the minutes of the meeting of the Council of the League proposing that invitations be issued to the Governments of the states actual signatories of the Protocol of the Permanent Court of International Justice and to the Government of the United States to appoint delegates to meet in Geneva on September first of the current year for the purpose of discussing any questions which it may be proper for them to discuss in this connection and for the purpose of framing any new agreement which may be found necessary to give effect to the special conditions on which the United States is prepared to adhere to the Protocol. I further note your statement that invitations have been issued to the various states signatory to the Protocol and you now extend an invitation to

[1] Inclosure in note from the Legation of the United States of America, Bern, Switzerland, April 18, 1926. Released to the American press, April 19.

the United States for such purpose. I am also advised that in the invitation sent to the states other than the United States the League has asked them to indicate to the United States Government the difficulty of treating the American reservations to adhesion to the Protocol of the Permanent Court by direct exchange of notes and to point out the need for a general agreement.

While acknowledging the courtesy of the invitation of the League of Nations to attend such a meeting, I do not feel that any useful purpose could be served by the designation of a delegate by my Government to attend a Conference for this purpose. The Senate gave its consent to the adherence of the United States to the Statute of the Permanent Court with certain specific conditions and reservations set forth in the Resolution, which I forwarded to you as the depository of the Protocol. These reservations are plain and unequivocal and, according to their terms, they must be accepted by the exchange of notes between the United States and each one of the forty-eight states signatory to the Statute of the Permanent Court before the United States can become a party and sign the Protocol. The Resolution specifically provided this mode of procedure.

I have no authority to vary this mode of procedure or to modify the conditions and reservations or to interpret them and I see no difficulty in the way of securing the assent of each signatory by direct exchange of notes as provided for by the Senate. It would seem to me to be a matter of regret if the Council of the League should do anything to create the impression that there are substantial difficulties in the way of such direct communication. This Government does not consider that any new agreement is necessary to give effect to the conditions and reservations on which the United States is prepared to adhere to the Permanent Court. The acceptance of the reservations by all the nations signatory to the Statute of the Permanent Court constitute such an agreement. If any machinery is necessary to give the United States an opportunity to participate through representatives for the election of judges, this should naturally be considered after the reservations have been adopted and the United States has become a party to the Statute of the Permanent Court of International Justice. If the States signatory to the Statute of the Permanent Court desire to confer among themselves, the United

States would have no objection whatever to such a procedure, but, under the circumstances it does not seem appropriate that the United States should send a delegate to such a Conference.

Accept, Sir, the renewed assurance of my highest consideration.

(Signed) FRANK B. KELLOGG.

V. CONFERENCE OF STATES SIGNATORIES OF THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

Final Act of the Conference

1. The Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice (Protocol of December 16, 1920) met at the International Labor Office in Geneva on September 1, 1926.

2. The occasion of this conference was the letter of March 2, 1926, by which the Secretary of State of the United States of America informed the Secretary-General of the League of Nations that the United States was disposed to adhere to the Protocol of Signature of December 16, 1920, on condition that each of the states signatories of the said Protocol should previously accept five reservations and conditions as follows:

"I. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the treaty of Versailles.

"II. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other states, Members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

"III. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

"IV. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for

the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

"V. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State, concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

This letter gave rise to the resolution of the Council of the League of Nations of March 18, 1926, suggesting that a Conference of the delegates of the states signatories of the Protocol should be convened at Geneva, in which the Government of the United States was also invited to participate. The Conference was charged with the task of studying the way in which the Governments of the signatories of the Protocol above mentioned might satisfy the five reservations and conditions proposed by the Government of the United States of America.

3. The Government of the United States, for the reasons set forth in a letter of April 17, 1926, addressed by the Secretary of State of the United States to the Secretary-General of the League of Nations, declined the invitation to take part in the Conference. The signatory states enumerated below designated as their delegates to the Conference:

Union of South Africa: Mr. J. S. Smit, high commissioner in London.

Albania: His Excellency M. Ilias Vrioni, envoy extraordinary and minister plenipotentiary accredited to His Excellency the President of the French Republic and to His Britannic Majesty; His Excellency Dr. Djemil Dino, envoy extraordinary and minister plenipotentiary accredited to His Majesty the King of Italy.

Australia: The Honorable J. G. Latham, C.M.G., K.C., attorney-general of the Commonwealth of Australia.

Austria: Dr. Marc Leitmaier, ministerial counsellor.

Belgium: M. H. Rolin, chef de cabinet of the Minister for Foreign Affairs.

British Empire: Sir Cecil James Barrington HURST, G.C.M.G., K.C.B., K.C., Legal Adviser to the British Foreign Office.

Bulgaria: His Excellency M. V. MOLLOFF, Minister of Finance; Substitute: M. Dimitri MIKOFF, chargé d'affaires at Bern, permanent Representative of the Bulgarian Government accredited to the League of Nations.

Canada: The Right Honorable Sir George Eulas FOSTER, G.C.M.G., member of the King's Privy Council for Canada.

China: His Excellency M. CHAO-HSIN CHU, envoy extraordinary and minister plenipotentiary accredited to His Majesty the King of Italy.

Denmark: His Excellency M. A. DE OLDENBURG, envoy extraordinary and minister plenipotentiary accredited to the Swiss Federal Council, permanent Danish Representative accredited to the League of Nations.

Dominican Republic: M. Tulio FRANCO FRANCO, chargé d'affaires at Paris, Rome and Brussels.

Spain: His Excellency M. Emilio DE PALACIOS, ambassador accredited to His Majesty the King of the Belgians; Substitutes: M. Ramirez MONTESINOS, chef du cabinet diplomatique at the Ministry for Foreign Affairs; M. DE ARENZANA, consul at Geneva.

Esthonia: M. A. SCHMIDT, director of political questions at the Foreign Office.

Finland: His Excellency M. Rafael ERICH, minister plenipotentiary, permanent Representative of Finland accredited to the League of Nations.

France: M. Henri FROMAGEOT, legal adviser to the Ministry for Foreign Affairs; Substitute: M. le Comte CLAUZEL, minister plenipotentiary, head of the French League of Nations Service.

Greece: M. Vassili DENDRAMIS, chargé d'affaires at Bern, permanent Representative of the Greek Republic accredited to the League of Nations; Substitute: M. Panayotis PIPINELLIS, secretary at the Ministry for Foreign Affairs.

Hungary: M. P. DE HEVESY, resident minister accredited to the League of Nations.

India: Sir William Henry Hoare VINCENT, G.C.I.E., K.C.S.I., member of the Council of the Secretary of State for India;

Sir Edward Maynard des Champs Chamier, K.C.I.E., legal adviser to the Secretary of State.

Irish Free State: M. Michael MacWhite, Representative of the Irish Free State accredited to the League of Nations.

Italy: His Excellency M. Vittorio Scialoja, Senator. Italian Representative on the Council of the League of Nations; Substitute: M. Massimo Pilotti, member of the Court of Appeal, attached to the Ministry for Foreign Affairs.

Japan: M. Isaburo Yoshida, counsellor of embassy in London.

Latvia: M. Charles Duzmans (unable to attend), permanent Latvian Representative accredited to the League of Nations; M. Peter Welps, delegate *ad audiendum.*

Liberia: His Excellency Baron Rodolphe Lehmann, envoy extraordinary and minister plenipotentiary accredited to His Excellency the President of the French Republic, permanent Representative accredited to the League of Nations; Substitute: M. N. Ooms, first secretary of legation.

Lithuania: His Excellency M. V. Sidzikauskas, envoy extraordinary and minister plenipotentiary accredited to the President of the German Reich.

Luxemburg: M. Charles Vermaire, consul at Geneva.

Norway: Dr. Frede Castberg, adviser in international law to the Ministry for Foreign Affairs.

New Zealand: The Right Honorable Sir Francis Henry Dillon Bell, G.C.M.G., K.C., member of the Executive Council of New Zealand; The Honorable Sir Christopher James Parr, K.C.M.G., high commissioner in London.

Panama: His Excellency M. Guillermo Andreve, former minister of Panama in France and Colombia; His Excellency Dr. Eusebio A. Morales, Minister of the Treasury.

Netherlands: Jonkheer W. J. M. van Eysinga, professor at the University of Leyden; Assisted by Baron F. M. van Asbeck, professor of the Academy of Law at Batavia (Dutch East Indies).

Persia: His Highness Prince Arfa, First Delegate of Persia accredited to the League of Nations.

Poland: Professor Count Michel Rostworowski, rector of the Jagellons University, Cracow; M. Léon Babinski, legal adviser to the Ministry for Foreign Affairs; Substitute: Dr. Titus Komarnicki, ministerial counsellor.

Portugal: His Excellency Dr. Auguste DE VASCONCELLOS, minister plenipotentiary.

Rumania: M. Démètre NEGULESCO, Substitute Judge of the Permanent Court of International Justice, associate member of the Institute of International Law, professor at the University of Bucarest.

Kingdom of the Serbs, Croats and Slovenes: Dr. Lazare MARKOVITCH, deputy, former Minister of Justice.

Siam: His Highness Prince CHAROON, envoy extraordinary and minister plenipotentiary accredited to His Excellency the President of the French Republic.

Sweden: His Excellency Professor O. UNDEN, former minister for foreign affairs, professor at the University of Upsala; Substitute: M. A. E. M. SJÖBORG, envoy extraordinary and minister plenipotentiary, secretary-general of the Ministry for Foreign Affairs.

Switzerland: M. Paul DINICHERT, minister plenipotentiary, head of the Division for Foreign Affairs in the Federal Political Department.

Czechoslovakia: His Excellency M. OSUSKY, envoy extraordinary and minister plenipotentiary accredited to His Excellency the President of the French Republic, Delegate of Greece, Poland, Rumania, the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia at the Reparation Commission.

Uruguay: His Excellency Dr. Enrique E. BUERO, envoy extraordinary and minister plenipotentiary accredited to the Swiss Federal Council.

Venezuela: His Excellency M. César ZUMETA, envoy extraordinary and minister plenipotentiary accredited to His Majesty the King of Italy; His Excellency M. Diogenes ESCALANTE, envoy extraordinary and minister plenipotentiary to His Britannic Majesty; His Excellency M. Caracciolo PARRA-PEREZ, former special plenipotentiary accredited to the Swiss Federal Council, chargé d'affaires at Bern.

In the course of its first meeting on September 1, 1926, the Conference elected as President, Jonkheer W. J. M. VAN EYSINGA, delegate of the Netherlands, and as Vice-Presidents, His Excellency M. César ZUMETA, delegate of Venezuela, and the Right

Honorable Sir Francis Henry Dillon BELL, delegate of New Zealand.

4. In the course of its sessions, continued from September 1, 1926, to September 23, 1926, the delegates named above, while regretting that they have not had the assistance of a representative of the Government of the United States, have studied the reservations and conditions of the United States with a strong desire to satisfy them in the largest possible measure. The Conference has unanimously welcomed the proposal of the United States to collaborate in the maintenance of the Permanent Court of International Justice; such collaboration has been awaited with confidence by the States which have accepted the Statute of the Court. The Conference has taken full account of the great moral effect which the participation of the United States in the maintenance of this institution of peace and justice would have on the development of international law and on the progressive organization of world society on the basis of a respect for law and the solidarity of nations. Nor has it been unmindful of the valuable American contributions to the progress of international justice in the course of the 19th and 20th centuries, notably in the fruitful participation of the delegates of the United States in the two Hague Peace Conferences and more recently in the large part taken by an eminent American jurist in the preparation of the Statute of the Court.

5. The Conference has recognized that adherence to the Protocol of Signature of December 16, 1920, by the United States under special conditions necessitates an agreement between the United States and the signatories of the Protocol.

6. The Conference has formulated the following conclusions as the basis of the replies to the letter addressed by the Secretary of State of the United States to each of the States signatories of the Protocol of December 16, 1920, by which the signatory States would declare their views as to the acceptance of the reservations and conditions proposed by the United States:

Reservation I

It may be agreed that the adherence of the United States to the Protocol of December 16, 1920, and the Statute of the Permanent Court of International Justice annexed thereto

shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Peace of Versailles of June 28, 1919.

Reservation II

It may be agreed that the United States may participate, through representatives designated for the purpose and upon an equality with the other States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, or for the filling of vacancies.

Reservation III

It may be agreed that the United States pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

Reservation IV

A. It may be agreed that the United States may at any time withdraw its adherence to the Protocol of December 16, 1920.

In order to assure equality of treatment, it seems natural that the signatory States, acting together and by not less than a majority of two-thirds, should possess the corresponding right to withdraw their acceptance of the special conditions attached by the United States to its adherence to the said Protocol in the second part of the fourth reservation and in the fifth reservation. In this way the *status quo ante* could be re-established if it were found that the arrangement agreed upon was not yielding satisfactory results.

It is to be hoped, nevertheless, that no such withdrawal will be made without an attempt by a previous exchange of views to solve any difficulties which may arise.

B. It may be agreed that the Statute of the Permanent Court of International Justice annexed to the Protocol of December 16, 1920, shall not be amended without the consent of the United States.

Reservation V

A. In the matter of advisory opinions, and in the first place as regards the first part of the fifth reservation, the Government of the United States will, no doubt, have become aware, since the despatch of its letters to the various Governments, of the provisions of Arts. 73 and 74 of the Rules of Court as amended by the Court on July 31, 1926 (Annex A). It is believed that these provisions are such as to give satisfaction to the United States, having been made by the Court in exercise of its powers under Art. 30 of its Statute. Moreover, the signatory States might study with the United States the possible incorporation of certain stipulations of principle on this subject in a protocol of execution such as is set forth hereafter (Annex B), notably as regards the rendering of advisory opinions in public.

B. The second part of the fifth reservation makes it convenient to distinguish between advisory opinions asked for in the case of a dispute to which the United States is a party and that of advisory opinions asked for in the case of a dispute to which the United States is not a party but in which it claims an interest, or in the case of a question, other than a dispute, in which the United States claims an interest.

As regards disputes to which the United States is a party, it seems sufficient to refer to the jurisprudence of the Court, which has already had occasion to pronounce upon the matter of disputes between a Member of the League of Nations and a State not belonging to the League. This jurisprudence, as formulated in Advisory Opinion No. 5 (Eastern Carelia), given on July 23, 1923, seems to meet the desire of the United States.

As regards disputes to which the United States is not a party but in which it claims an interest, and as regards questions, other than disputes, in which the United States claims an interest, the Conference understands the object of the United States to be to assure to itself a position of equality with States represented either on the Council or in the Assembly of the League of Nations. This principle should be agreed to. But the fifth reservation appears to rest upon the presumption that the adoption of a request for an advisory opinion by the Council

or Assembly requires a unanimous vote. No such presumption, however, has so far been established. It is therefore impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient. In any event the United States should be guaranteed a position of equality in this respect; that is to say, in any case where a State represented on the Council or in the Assembly would possess the right of preventing, by opposition in either of these bodies, the adoption of a proposal to request an advisory opinion from the Court, the United States shall enjoy an equivalent right.

Great importance is attached by the Members of the League of Nations to the value of the advisory opinions which the Court may give as provided for in the Covenant. The Conference is confident that the Government of the United States entertains no desire to diminish the value of such opinions in connection with the functioning of the League of Nations. Yet the terms employed in the fifth reservation are of such a nature as to lend themselves to a possible interpretation which might have that effect. The Members of the League of Nations would exercise their rights in the Council and in the Assembly with full knowledge of the details of the situation which has necessitated a request for an advisory opinion, as well as with full appreciation of the responsibilities which a failure to reach a solution would involve for them under the Covenant of the League of Nations. A State which is exempt from the obligations and responsibilities of the Covenant would occupy a different position. It is for this reason that the procedure to be followed by a nonmember State in connection with requests for advisory opinions is a matter of importance and in consequence it is desirable that the manner in which the consent provided for in the second part of the fifth reservation will be given should form the object of a supplementary agreement which would insure that the peaceful settlement of future differences between Members of the League of Nations would not be made more difficult.

The Conference ventures to anticipate that the above conclusions will meet with acceptance by the United States. It observes that the application of some of the reservations of the United States would involve the conclusion of an appropriate

agreement between the United States and the other States signatories of the Protocol of December 16, 1920, as was indeed envisaged by the Secretary of State of the United States in his reply to the Secretary-General of the League of Nations dated April 17, 1926. To this end, it is desirable that the States signatories of the Protocol of December 16, 1920, should conclude with the United States a protocol of execution which, subject to such further exchange of views as the Government of the United States may think useful, might be in the form set out below (Annex B).

Annex A

Extract from the Revised Rules of Court of the Permanent Court of International Justice

(*Arts. 71, 73 and 74, as printed herewith, were amended on July 31, 1926*)

Article 71

Advisory opinions shall be given after deliberation by the full Court. They shall mention the number of the judges constituting the majority.

Dissenting judges may, if they so desire, attach to the opinion of the Court either an exposition of their individual opinion or the statement of their dissent.

Article 72

Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Article 73

1. The Registrar shall forthwith give notice of the request for an advisory opinion to the members of the Court, to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or States admitted to appear before the Court or international organizations considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

2. States, Members and organizations having presented written or oral statements or both shall be admitted to comment on the statements made by other States, Members or organizations, in the form, to the extent and within the time limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States, Members and organizations having submitted similar statements.

Article 74

Advisory opinions shall be read in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States, of Members of the League and of international organizations immediately concerned. The Registrar shall take the necessary steps in order to insure that the text of the advisory opinion is in the hands of the Secretary-General at the seat of the League at the date and hour fixed for the meeting held for the reading of the opinion.

Signed and sealed original copies of advisory opinions shall be placed in the archives of the Court and of the Secretariat of the League. Certified copies thereof shall be transmitted by the Registrar to States, to Members of the League, and to international organizations immediately concerned.

Any advisory opinion which may be given by the Court, and the request in response to which it is given, shall be printed and published in a special collection for which the Registrar shall be responsible.

Annex B

Preliminary Draft of a Protocol

The States signatories of the Protocol of Signature of the Permanent Court of International Justice, dated December 16, 1920, and the United States of America, through the undersigned duly authorized representatives, have agreed upon the following provisions regarding the adherence by the United States of America to the said Protocol, subject to the five reservations formulated by the United States.

Article 1

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 2

No amendment of the Statute annexed to the Protocol of December 16, 1920, may be made without the consent of all the Contracting States.

Article 3

The Court shall render advisory opinions in public session.

Article 4

The manner in which the consent provided for in the second part of the fifth reservation is to be given, will be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.

The States signatories of the Protocol of December 16, 1920, will be informed as soon as the understanding contemplated by the preceding paragraph has been reached.

Should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council.

Article 5

Subject to the provisions of Art. 7 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute annexed to the Protocol of December 16, 1920.

Article 6

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all the States which have ratified the Protocol of December 16, 1920, including the United States, have deposited their ratifications.

Article 7

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16, 1920, in the second part of its fourth reservation and in its fifth reservation. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the receipt of the said notification, not less than two-thirds of the contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

Article 8

The present Protocol shall remain open for signature by any State which may in the future sign the Protocol of Signature of December 16, 1920.

Done at....., the.....day of....., 19...., in a single copy, of which the French and English texts shall both be authoritative.

7. The Conference recommends to all the States signatories of the Protocol of December 16, 1920, that they should adopt the above conclusions and dispatch their replies as soon as possible. It directs its President to transmit to the Governments of the said States a draft letter of reply to the Secretary of State of the United States.

In faith of which the Delegates have signed the present Act.

DONE at Geneva, the twenty-third day of September nineteen hundred and twenty-six, in a single copy, of which the French and English texts shall both be authoritative, and which shall remain deposited in the archives of the League of Nations. A certified copy shall be sent to each of the States signatories of the Protocol of December 16, 1920, as well as to the Council of the League of Nations, which convoked the Conference.

Union of South Africa:
Albania: D. DINO.
Australia: J. G. LATHAM.
Austria: Dr. M. LEITMAIER.
Belgium: HENRI ROLIN.
British Empire: CECIL J. B. HURST.
Bulgaria: Wl. MOLLOFF.
Canada: GEORGE EULAS FOSTER.
China:
Denmark: A. OLDENBURG.
Dominican Republic: Dr. FRANCO.

Il est entendu que mon gouvernement se réserve le droit d'aeeepter, purement et simplement, les réserves des Etats-Unis d'Amérique, si bon lui semble.[1]

Spain: JUAN DE ARENZANA.
Esthonia: A. SCHMIDT.
Finland: RAFAEL ERICH.
France: HENRI FROMAGEOT.
Greece: VASSILI DENDRAMIS.
Hungary: PAUL DE HEVESY.
India: W. H. VINCENT.
Irish Free State: M. MACWHITE.
Italy: MASSIMO PILOTTI.
Japan: ISABURO YOSHIDA.
Latvia:
Liberia:
Lithuania VENCESLAS SIDZIKAUSKAS.
Luxemburg: CH. G. VERMAIRE.
Norway: FREDE CASTBERG.

[1] "It is understood that my government reserves the right of accepting purely and simply the reservations of the United States of America, if that seems advisable to it."

New Zealand: F. H. D. Bell; C. J. Parr.
Panama: Eusebio A. Morales.
Netherlands: v. Eysinga.
Persia: Pce. Arfa.
Poland: Michel Rostworowski; Léon Babinski.
Portugal: Augusto de Vasconcellos.
Rumania: Demetre Negulesco.
Kingdom of the Serbs, Croats and Slovenes: Dr. Lazare Marcovitch.
Siam: Charoon.
Sweden: Erik Sjöborg.
Switzerland: Paul Dinichert.
Czechoslovakia: Stefan Osusky.
Uruguay:
Venezuela: C. Zumeta; Diógenes Escalante; C. Parra-Pèrez.

Certified true copy of the original Final Act deposited, in accordance with the concluding provision thereof, in the archives of the League of Nations.

For the Secretary-General,

The Acting Director of the Legal Section:

VI. Permanent Court of International Justice

Protocol of Signature [1]

The Members of the League of Nations, through the undersigned, duly authorized, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on the 13th December, 1920, at Geneva.

Consequently, they hereby declare that they accept the jurisdiction of the Court in accordance with the terms and subject to the conditions of the above-mentioned Statute.

The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th De-

[1] League of Nations *Treaty Series*. VI, p. 380; XV, p. 304.

cember, 1920, is subject to ratification. Each power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratifieation to the other signatory powers. The ratification shall be deposited in the archives of the Secretariat oı the League of Nations.

The said Protocol shall remain open for signature by the Members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League.

The Statute of the Court shall come into force as provided in the abovementioned decision.

Executed at Geneva, in a single copy, the French and English texts of whieh shall both be authentic.

December 16, 1920.

[Here follow signatures of 48 Member states.]

Optional Clause[1]

The undersigned, being duly authorized thereto, further declare, on behalf of their Government, that, from this date, they aecept as compulsory, *ipso facto* and without special Convention, the jurisdiction of the Court in eonformity with artiele 36, paragraph 2, of the Statute of the Court, under the following eonditions:

Abyssinia. — On behalf of the Imperial Ethiopian Government the undersigned recognizes as compulsory, *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Court in conformity with Article 36, paragraph 2 of the Statute, for a period of five years, excepting disputes in respect of which the parties have agreed to have recourse to another method of pacific settlement.

July 12, 1926.[2]

(Signed) Lagarde, Duc d'Entotto.

Austria. — On behalf of the Austrian Republic, I declare that the latter recognizes, in relation to any other Member or State which accepts the same obligation, that is to say, on the condition of reciprocity, the jurisdiction of the Permanent Court as compulsory, *ipso facto* and without any special convention, for a period of five years.

March 14, 1922.

(Signed) Emmerich Pflügl.

[1] "Ratification is not in point of fact required by the terms of the Optional Clause" — Publications of the Court, *Second Annual Report*, p. 77 (Series E, No. 2).

[2] Deposited July 16, 1926.

Belgium. — On behalf of the Belgian Government, I recognize as compulsory, *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court for a period of fifteen years, in any disputes arising after the ratification of the present declaration with regard to situations or facts subsequent to this ratification, except in cases where the parties have agreed or shall agree to have recourse to another method of pacific settlement.

September 25, 1925.[1]

(Signed) P. Hymans.

Brazil. — The instrument of ratification (September 6, 1921) deposited with the Permanent Secretariat of the League of Nations by the Brazilian Government contains the following passage: " . . . we declare to recognize as compulsory, in accordance with the said resolution of the National Legislature, the jurisdiction of the said Court for the period of five years, on condition of reciprocity and as soon as it has likewise been recognized as such by two at least of the powers permanently represented on the Council of the League of Nations."

November 1, 1921.

Bulgaria. — On behalf of the Government of the Kingdom of Bulgaria, I recognize, in relation to any other Member or State which accepts the same obligation, the jurisdiction of the Court as compulsory, *ipso facto* and without any special convention, unconditionally.

July 29, 1921.[2]

(Signed) Pomenov.

China. — The Chinese Government recognize as compulsory, *ipso facto* and without special convention, in relation to any Member or State which accepts the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court for a period of five years.

May 13, 1922.

(Signed) Ts. F. Tang.

Costa Rica.[3] — On condition of reciprocity.

(Signed) Manuel M. de Peralta.

[1] Ratification deposited March 10, 1926.

[2] Ratification deposited August 12, 1921.

[3] The Costa Rican declaration was signed before January 28, 1921, according to Publications of the Court, *Second Annual Report*, p. 78, note (Series E, No. 2). At that place the acceptance is recorded as for five years. In the first publication of acceptances, no time limit is given (Minutes of the Twelfth Session of the Council of the League of Nations, p. 115).

Denmark. — On behalf of the Government of Denmark and subject to ratification, I recognize, in relation to any other Member or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without special convention, for a further period of ten years.

Geneva, December 11, 1925.[1]

(Signed) ANDREAS OLDENBURG.

Dominican Republic. — On behalf of the Government of the Dominican Republic and subject to ratification, I recognize, in relation to any other Member or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without special convention.

September 30, 1924.

(Signed) JACINTO R. DE CASTRO.

Esthonia. — In the instrument of ratification occurs the following passage: "The Esthonian Republic declares to recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or state accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Court, in conformity with Article 36, paragraph 2, of the Statute of the Court, for a period of five years, in any future dispute in respect of which the parties have not agreed to have recourse to another method of pacific settlement."

Deposited May 2, 1923.

Finland. — On behalf of the Government of the Republic of Finland, and subject to ratification, I recognize, in relation to any other Member or State which accepts the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without any special convention, for a period of five years.

Ratification deposited April 6, 1922.[2]

(Signed) ENCKELL.

France. — I hereby declare that, subject to ratification, the French Government gives its adhesion to the optional clause of Article 36, paragraph 2, of the Statute of the Court, on the condition of reciprocity, for a period of 15 years, with power of denunciation, should the Protocol of Arbitration, Security and the Reduction of Armaments signed this day lapse, and further subject to the observations made at the First Committee of the Fifth Assembly, according to the terms of which "one of the parties to the dispute may bring the said dispute before the Council of the League of Nations for the purposes of the pacific

[1] Ratification deposited on March 28, 1926, counted as dating from June 13, 1926, on which date the previous acceptance expired by time limitation.

[2] The signature and declaration were affixed prior to September 1, 1921, (Minutes of the Fourteenth Session of the Council of the League of Nations, p. 58).

settlement laid down in paragraph 3 of Article 15 of the Covenant, and during such proceedings neither party may take proceedings against the other in the Court."

October 2, 1924.

(Signed) A. BRIAND.

Haiti.[1] — On behalf of the Republic of Haiti, I recognize the jurisdiction of the Permanent Court of International Justice as compulsory.

(Signed) F. ADDOR,
Consul.

Latvia. — On behalf of the Latvian Government and subject to ratification by the Saeima, I recognize as compulsory, *ipso facto* and without special convention, in relation to any other Member or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, for a period of five years, in any future dispute as to which the parties have not agreed to have recourse to some other method of pacific settlement.

September 11, 1923.[2]

(Signed) Z. A. MEIEROVICS.

Liberia.[1] — On behalf of the Government of the Republic of Liberia, and subject to ratification by the Liberian Senate, I recognize, in relation to any other Member or State which accepts the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without any special convention.

(Signed) B. LEHMAN.

Lithuania. — For a period of five years.

October 5, 1921.[3]

(Signed) GALVANAUSKAS.

Luxemburg.[4] — On behalf of the Government of Luxemburg and subject to ratification, I recognize, in relation to any Member or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without special convention, for a period of five years.

(Signed) LEFORT.

[1] The signature and declaration were affixed prior to September 1, 1921 (*loc. cit.*, p. 58).

[2] The ratification of December 28, 1923, was deposited on February 12, 1924 (*Treaty Series*, XXIV, 153).

[3] Ratification deposited May 16, 1922.

[4] The signature and declaration were affixed prior to February 12, 1921 (Minutes of the Twelfth Session of the Council of the League of Nations, p. 115).

Netherlands. — On behalf of the Netherlands Government, I recognize as compulsory, *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Court, in conformity with Article 36, paragraph 2, of the Statute of the Court, for a period of ten years as from August 6, 1926, on any future disputes excepting those in regard to which the parties would have agreed, after the coming into force of the Statute of the Permanent Court of International Justice, to have recourse to another method of pacific settlement.

September 2, 1926.

(Signed) W. DOUDE VAN TROOSTWYK.

Norway. — On behalf of the Norwegian Government, and not being subject to ratification, I recognize, in relation to any other Member or State accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Court as compulsory *ipso facto* and without special agreement for a period of ten years as from October 3, 1926.

September 22, 1926.[1]

(Signed) FRIDTJOF NANSEN.

Panama. — The following declaration was transmitted by M. R. A. Amador, Chargé d'Affaires of the Republic of Panama at Paris, in a letter dated October 25, 1921, addressed to Sir Eric Drummond, Secretary-General of the League of Nations: "On behalf of the Government of Panama, I recognize, in relation to any other Member or State which accepts the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory *ipso facto* and without any special convention."

(Signed) R. A. AMADOR,
Chargé d'Affaires.

Portugal.[2] — On behalf of Portugal, I recognize, in relation to any Member or State accepting the same obligation, the jurisdiction of the Court as compulsory, *ipso facto* and without special convention.

(Signed) AFFONSO COSTA.

Salvador.[3] — On condition of reciprocity.

(Signed) J. GUSTAVO GUERRERO.
ARTURO R. AVILA.

[1] Ratification deposited October 3, 1921, of declaration of September 6, 1921.

[2] The signature and declaration were affixed prior to January 28, 1921; the ratification was deposited on October 8, 1921 (Publications of the Court, *Second Annual Report*, p. 80).

[3] The signature and declaration were affixed prior to January 28, 1921.

Sweden. — On behalf of the Royal Swedish Government, I recognize, in relation to any other Member or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory *ipso facto* and without special Convention, for a period of ten years to be reckoned from the date on which the Swedish Declaration of August 16, 1921, ceases to be in force.

Geneva, March 18, 1926.

(Signed) EINAR HENNINGS.

Switzerland. — On behalf of the Swiss Confederation and subject to ratification, the undersigned recognizes, in relation to any other Member of the League of Nations or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without special convention, for a period of ten years to be reckoned as from the deposit of the instrument of ratification.

Geneva, March 1, 1926.[1]

(Signed) MOTTA.

Uruguay.[2] — On behalf of the Government of Uruguay, I recognize, in relation to any Member or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without special convention.

(Signed) B. FERNANDEZ Y MEDINA.

STATUTE

FOR THE PERMANENT COURT OF INTERNATIONAL JUSTICE PROVIDED FOR BY ARTICLE 14 OF THE COVENANT OF THE LEAGUE OF NATIONS

ARTICLE 1. A Permanent Court of International Justice is hereby established in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I

Organization of the Court

ART. 2. The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

[1] Ratification deposited July 24, 1926.

[2] The signature and declaration were affixed prior to January 28, 1921; the ratification was deposited on September 27, 1921.

ART. 3. The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

ART. 4. The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the list of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.[1]

ART. 5. At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

ART. 6. Before making these nominations, each national group is recommended to consult its highest Court of Justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

ART. 7. The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

ART. 8. The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

[1] Article 44 of the convention of The Hague of 1907 for the pacific settlement of international disputes reads as follows:

"Each contracting power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

"The persons thus selected are inscribed, as members of the Court, in a list which shall be notified to all the contracting powers by the Bureau.

"Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the contracting powers.

"Two or more powers may agree on the selection in common of one or more members.

"The same person can be selected by different powers.

"The members of the Court are appointed for a term of six years. These appointments are renewable.

"Should a member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years."

Art. 9. At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

Art. 10. Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

Art. 11. If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Art. 12. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Art. 13. The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

Art. 14. Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

Art. 15. Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court aud shall have regard firstly to priority of election and secondly to age.

Art. 16. The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

Art. 17. No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

ART. 18. A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

This notification makes the place vacant.

ART. 19. The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

ART. 20. Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

ART. 21. The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

ART. 22. The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

ART. 23. A session of the Court shall be held every year.

Unless otherwise provided by rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

ART. 24. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

ART. 25. The full Court shall sit except when it is expressly provided otherwise.

If eleven judges can not be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

ART. 26. Labor cases, particularly cases referred to in Part XIII (Labor) of the treaty of Versailles and the corresponding portion of the other treaties of peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of

judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labor cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate, as to one half, representatives of the workers, and as to one half, representatives of employers from the list referred to in Article 412 of the treaty of Versailles and the corresponding articles of the other treaties of peace.

In labor cases the International Labor Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

Art. 27. Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the treaty of Versailles and the corresponding portions of the other treaties of peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications cases" composed of two persons nominated by each Member of the League of Nations.

Art. 28. The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

Art. 29. With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

Art. 30. The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

Art. 31. Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the

parties only the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

ART. 32. The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-Presidents, judges and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Traveling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

ART. 33. The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II

Competence of the Court

ART. 34. Only states or Members of the League of Nations can be parties in cases before the Court.

ART. 35. The Court shall be open to the Members of the League and also to states mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a state which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute toward the expenses of the Court.

ART. 36. The jurisdiction of the Court comprises all cases which the parties

refer to it and all matters specially provided for in treaties and conventions in force.

The Members of the League of Nations and the states mentioned in the Annex to the Covenant may, either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory, *ipso facto* and without special agreement, in relation to any other Member or state accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a treaty.
(*b*) Any question of international law.
(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation.
(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or states, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Art. 37. When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

Art. 38. The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;
4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Chapter III

Procedure

Art. 39. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorize a language other than French or English to be used.

ART. 40. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

ART. 41. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

ART. 42. The parties shall be represented by Agents.

They may have the assistance of Counsel or Advocates before the Court.

ART. 43. The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

ART. 44. For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ART. 45. The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ART. 46. The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

ART. 47. Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

ART. 48. The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

ART. 49. The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

ART. 50. The Court may, at any time, intrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion.

ART. 51. During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Art. 52. After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Art. 53. Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Art. 54. When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

Art. 55. All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

Art. 56. The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

Art. 57. If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

Art. 58. The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Art. 59. The decision of the Court has no binding force except between the parties and in respect of that particular case.

Art. 60. The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Art. 61. An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

Art. 62. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

ART. 63. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

ART. 64. Unless otherwise decided by the Court, each party shall bear its own costs.

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CUMULATIVE INDEX, VOLUMES VII–IX, 1924–1926

[The references in Roman are to volume and those in Arabic to page.]

PAGE

Aaland Islands:
  commission of rapporteurs.....VII, 164–166
  conference on non-fortification and neutralization.....VII, 166; VIII, 412
  Council resolution.....VII, 165
  dispute.....VIII, 425–428
Abbott, Edith.....VIII, 390
Abbott, Grace.....VII, 10, 18, 105, 221; VIII, 382, 545, 546; IX, 303
Abbott, James F.....VIII, 16
Abel, Dr. John J.....VII, 23, 107; VIII, 385
Abrams, Mrs. Kate T.....VII, 34
Abyssinia:
  acceptance of optional clause of Permanent Court.....IX, 639
  arbitration settlements.....IX, 476
  budget unit of League of Nations...VIII, 405
  member of International Labor Organization.....VII, 138; VIII, 585
  member of League of Nations VII, 104; VIII, 380; IX, 142
  optional clause of World Court signed IX, 567
  signatory of protocol of World Court..IX, 567
Acilu, Manuel G. de.....VIII, 133
Acton, Vice-Adml. Baron..VII, 146; VIII, 464
Acworth, Sir William A.....VIII, 326
Adams, Charles Francis.....IX, 492, 493
Adatei, Mineichiro....VII, 125, 393; VIII, 580
Addor, F.....IX, 642
Ador, Gustave.....VIII, 363, 517
Advancement of peace:
  commissioners named.....IX, 542
  treaties.....IX, 534–546
Afghanistan:
  arbitration settlements .....IX, 476
  arbitration treaty —
    list of .....IX, 602
    with Persia, 1921.....IX, 593
  nonmember of League of Nations VII, 105; VIII, 381; IX, 157
  nonsignatory of opium convention of 1912.....VIII, 72
  opium production, 1922.....VIII, 47
  treaty of friendship with Persia.....IX, 453
Africa, Japanese residents in.....VII, 283
Africa, Southwest, mandate for.....VII, 235
Aggression, acts of.....VII, 480, 489
Agreement on control and use of prepared opium, Feb. 11, 1925.....VIII, 417
Aguero y Bethancourt, Aristides de VII, 208; VIII, 524, 530

PAGE

Ahmed Reebid Bey.....IX, 468
Alabama claims.....IX, 463, 492–494
Albania:
  abolition of visas.....VIII, 528
  admission to League of Nations.....VII, 240
  advisers in home affairs, public works and law.....VII, 175
  boundaries of.....VIII, 361, 448
  budget unit of League of Nations...VIII, 405
  delimitation commission.....VIII, 435–436
  dispute over frontiers.....VII, 173–175
  Enquiry Commission.....VII, 174
  finances.....VII, 215
  frontiers of.....VIII, 434–436
  independence of.....VIII, 360
  member —
    conference of signatories to Protocol of Signature of Court.....IX, 624
    International Labor Organization VII, 138; VIII, 585
    League of Nations VII, 104; VIII, 380; IX, 142
    Permanent Court of International Justice.....VIII, 581
    Second Opium Conference.....VIII, 192
  minorities protection.....VII, 240
  monastery of St.-Naoum.....VIII, 361, 448
  Moslems in Greece.....VIII, 447
  permanent delegate to League VIII, 620; IX, 156
  rights to minorities guaranteed.....VII, 240
  Serbian military occupation.....VIII, 434
  signatory of Protocol for Pacific Settlement of International Disputes..VII, 391
  signatory of protocol of World Court..IX, 567
  voluntary migration of ethnic minorities VII, 242
Alcalá-Zamora, M.....VII, 148
Aldao, Ricardo.....IX, 542
Alderman, E. A.....IX, 544
Aleppo Reception House.....VIII, 550
Algeciras Act of 1906.....VII, 591
Allen, J.....VIII, 257
Allen, Percy S.....VIII, 7
Allied and Associated Powers:
  aide-mémoire of United States on Turkish settlement.....VII, 581–582
  Allied-German agreement, Aug. 30, 1924 VIII, 250–257
  Allied-Turkish establishment convention VII, 594

PAGE

Allied and Associated Powers — Continued.
amnesty in occupied territories VIII, 260–261
attitude on German entrance into League IX, 47
control of Constantinople.....VII, 574
delay in completion of treaty of peace with Turkey.....VII, 573
disarmament of Turkish troops.....VII, 573
Paris Financial Agreement.....VIII, 265–275
preservation of rights under treaty of Versailles.....VIII, 264
reparation —
defects relating to collection of German payments.....VIII, 256
waiving of interest charges.....VIII, 287
restitution under Dawes annuities..VIII, 281
secret agreements relative to Turkey. VII, 573
suppression of special tribunals in Rhineland.....VIII, 260
Supreme Council on German-Polish frontier.....VIII, 432
system for security pact.....IX, 43
terms of Turkish settlement at Lausanne VII, 587–590
treaty of Sèvres, August 10, 1920 VII, 576–578
Turkish war material ordered surrendered VII, 573
violation of Mudros armistice...VII, 573–574
Alonzo, Severo F.....IX, 542
Alsace-Lorraine:
pensions, civil and military.....VIII, 283
social insurance funds.....VIII, 283
war expenses.....VIII, 283
Altamira y Crevea, Rafael VII, 73, 86, 125, 127; VIII, 580, 582
Amador, R. A.....IX, 643
Ambassadors, Conference of:
Albanian dispute....VII, 173–175; VIII, 435
boundary between Poland and Czechoslovakia.....VII, 135–137; VIII, 353
decision on Upper Silesia.....VII, 172
Italo-Greek dispute VII, 177–181; VIII, 438–442
Jaworzina frontier.....VIII, 446–447
Memel, territory of..VII, 182–184; VIII, 443
Polish-Lithuanian boundary.....VIII, 431
report of interallied commission on Corfu responsibility.....VII, 130
Serbo-Albanian frontier.....VIII, 448
Upper Silesian decision.....VIII, 433–434
Amendment to labor part of peace treaties VIII, 417
"America and the Permanent Court of International Justice, II"...IX, 612–653
"America and the Philippines".....VIII, 20
American Association of University Women VII, 35
American Bar Association VII, 43, 47, 83; IX, 529
American Bureau of Social Hygiene.....IX, 311

PAGE

American Conference on International Arbitration.....IX, 513
"American Cooperation with the League of Nations" by Manley O. Hudson VII, 1–26
American Federation of Labor, statement on Permanent Court..VII, 33, 43, 92–94
American Federation of Teachers.....VII, 34
American Institute of International Law VIII, 423; IX, 189, 549
"The American-Japanese Problem" by Sidney Lewis Gulick.....VIII, 27
American-Japanese Society.....VII, 317
American Legion attitude on war.....VII, 45
American Peace Society.....IX, 433
American Red Cross.....VIII, 453
American Social Hygiene Association VIII, 549; IX, 305
American Society for Judicial Settlement of International Disputes.....IX, 524
American Society of International Law VIII, 423
American states, conflicts between....IX, 536
American Unitarian Association.....VII, 34
American University Union VII, 108; VIII, 337
American Women's Hospitals.....VIII, 550
"Americans by Choice" by John Palmer Gavit.....VIII, 30
"Americans in Eastern Asia" by Tyler Dennett.....VIII, 16
Amery, Mr.....IX, 194, 195, 197
Ames, Fisher.....IX, 430
Ames, Sir Herbert Brown VII, 120; VIII, 401; IX, 166
Amunategui, Francisco VII, 208; VIII, 524, 533
Anderson, M.....IX, 468
Anderson, Sir Alan G.....VIII, 530
Andorra.....VIII, 382
Andrade, Freire d'...VII, 235; VIII, 490, 493
Andreve, Guillermo.....IX, 626
Andrews, C. F.....VIII, 44
Andrews, Dr. John B...VII, 11, 110; VIII, 390
Anesaki, Masaharu.....VIII, 32
Angelini, G.....VIII, 534
Anglo-American-French agreement...IX, 11, 13
Anglo-British arbitration treaty:
text of treaty.....IX, 509
Anglo-Jewish Association.....IX, 325
Angora, see Turkey.
Anigstein, Dr.....VIII, 504
"Annual Report on Reforms and Progress in Chosen".....VIII, 21
Anselmino, Dr.....VIII, 553; IX, 306
Anthrax committee.....VII, 23, 105
Anzilotti, Dionisio VII, 37, 127; VIII, 347, 582
"An Appeal to My Colleagues" by Bisbop Charles H. Breut.....VIII, 159–165

PAGE
Araboglou, Mgr. Constantin.....IX, 190
Aranha, Graça.....VIII, 133, 135
Arbitral tribunals, mixed.....IX, 579
Arbitration:
advantages of World Court.....IX, 566
Alabama claims.....IX, 463, 492–494
Art. 21 of treaty of Guadalupe Hidalgo, Feb. 2, 1848.....IX, 485
bilateral compromisory clauses.....IX, 581
bilateral treaties.....IX, 581, 582
Bryan treaties.....IX, 534
commercial disputes convention.....VII, 218
"compromis".....IX, 455
compulsory jurisdiction.....VII, 52, 510
compulsory on non-legal disputes. VII, 394, 403
Congressional attitude of United States, 1874.....IX, 495
constitutional provisions for.....IX, 458
convention between Germany and Belgium.....IX, 60–66
Covenant articles.....IX, 563
definition.....IX, 451
distribution of Ottoman public debt..IX, 219
formulas.....IX, 453–455
Great Britain —
speech of Sir Edward Grey.....IX, 524
Jay treaty of 1794.....VII, 78; IX, 479
arbitrations under.....IX, 481–484
commissions under.....IX, 482
justiciable questions.....VII, 510; IX, 526
Latin American states.....IX, 458
list of cases.....IX, 475
list of engagements.....IX, 455
Locarno Conference treaty of mutual guaranty.....IX, 55–60, 599
memorial of British House of Commons IX, 498, 499
pacific settlement under League of Nations.....VIII, 424–450
petitions to Congress of United States IX, 485
postwar development.....IX, 555–586
prewar development.....IX, 457–476
procedure.....VII, 470
of United States.....VII, 51–53
under Experts' plan.....VIII, 315–318
see also League of Nations.
under Protocol for Pacific Settlement of International Disputes.....VII, 403
Protocol for the Pacific Settlement of International Disputes —
analysis by Professor Manley O. Hudson.....VII, 391–400
resolutions of Assembly of League of Nations.....VII, 410–413
text of.....VII, 401–410
Recueil des arbitrages internationaux IX, 475
St. Croix River.....IX, 480
Second Hague Conference —
recovery of contract debts.....IX, 471
settlements by states from 1794–1904 IX, 476

PAGE
Arbitration — Continued.
special agreement.....IX, 455
subjects for.....IX, 454
summary procedure.....VII, 476–477
system of.....VII, 466
treaties —
Czechoslovakia and France.....IX, 74–75
France and Germany.....IX, 66
France and Poland.....IX, 73–74
Germany and Czechoslovakia.....IX, 72
Germany and Poland.....IX, 66–71
index of.....IX, 587–607
Jay treaty of 1794.....IX, 457
Nepal and Sikkim.....IX, 456
Nepal and United Kingdom.....IX, 456
of United States.....VII, 9, 42–43
printed in *Treaty Series*.....IX, 455
summary of.....IX, 587–607
United States and Mexico, 1848...IX, 458
Vienna, June 8, 1915.....IX, 457
United States —
naval appropriation bill, 1916.....IX, 554
proposal for court of arbitration....IX, 554
treaty questions of national honor..IX, 583
Upper Silesian social insurance funds IX, 217
see Arbitration, security and disarmament, also Protocol for Pacific Settlement.
Arbitration, American Conference on International.....IX, 513
"Arbitration and the United States" IX, 447–607
Arbitration, Permanent Court of:
American members.....VII, 8
American plan for.....IX, 477
cases decided.....VII, 78; IX, 463
commissions of inquiry, matters referred to.....IX, 470
foundation of Permanent Court of International Justice.....VII, 38
functions of.....VII, 467–470
members.....IX, 463
model for Central American Tribunal IX, 551
panel for tribunal.....IX, 466
publication of awards.....IX, 475
ratifications of convention.....IX, 467
record of work.....IX, 467
states parties to convention.....IX, 467
United States *vs.* Norway.....VII, 48–49
Arbitration, security and disarmament:
aggressive war, condemnation of. VII, 422–424
analysis of the scheme.....VII, 420–452
Assembly resolution of Sept. 6, 1924 VII, 414–415
Assembly subcommittee protocol VII, 495–502
Committee of Arbitrators.....VII, 430
compulsory arbitration —
basis of Protocol.....VII, 420
difference between old and new "arbitration".....VII, 421

PAGE

Arbitration, security and disarmament — Continued.
requested by one of the parties VII, 428–430
compulsory jurisdiction of Permanent Court ..... VII, 424–426
general report submitted to Fifth Assembly of League ..... VII, 414–452
historical statement ..... VII, 416–419
nature of rules of Protocol ..... VII, 422
pacific methods strengthened .... VII, 426–432
rôle of Assembly under Protocol VII, 432–433
sphere of application of methods of pacific procedure ..... VII, 431–432
Archer, Wm. J. ..... VIII, 128, 130, 133, 136
Arenzana, Juan de ..... IX, 637
Arfa-ed-Dowleh, Prince VIII, 190, 191, 194; IX, 161, 626, 633
Argentine Republic:
arbitration —
proposal for system of ..... IX, 464
arbitration settlements ..... IX, 476
arbitration treaties —
Bolivia, 1902, 1921 ..... IX, 590, 596
Brazil, 1828, 1905, 1923, 1928 IX, 587, 591, 594, 596
Chile, 1902, 1923, 1928 ... IX, 590, 594, 596
Colombia, 1912, 1923 ..... IX, 592, 596
Cuba, 1923 ..... IX, 596
Dominican Republic, 1923 ..... IX, 596
Ecuador, 1911, 1923 ..... IX, 592, 596
France, 1914 ..... IX, 593
Guatemala, 1923 ..... IX, 596
Haiti, 1923 ..... IX, 596
Honduras, 1923 ..... IX, 596
Italy, 1907 ..... IX, 591
Nicaragua, 1923 ..... IX, 596
Panama, 1923 ..... IX, 596
Paraguay, 1899, 1923 ..... IX, 589, 596
Peru, 1874 ..... IX, 588
Spain, 1916 ..... IX, 594
Switzerland, 1924 ..... IX, 597
United States, 1908, 1923 ..... IX, 523, 596
Uruguay, 1899, 1923 ..... IX, 589, 596
Venezuela, 1911, 1923 ..... IX, 592, 596
budget unit of League of Nations .... VIII, 405
list of arbitration treaties ..... IX, 587–607
member of International Labor Organization ..... VII, 138; VIII, 535
member of League of Nations VII, 104; VIII, 380; IX, 142
nonsignatory of 1912 convention on opium ..... VIII, 72
permanent delegate to League VIII, 620; IX, 156
population density ..... VII, 282
treaty for advancement of peace, not in force ..... IX, 545
Arizona Civil Code of 1913 ..... IX, 380
Armament:
Commission of Inquiry ..... VII, 491

PAGE

Armament — Continued.
control of traffic in ..... VII, 151
convention for the control of traffic in VIII, 418
interchange of information ..... VIII, 469–470
investigation under peace treaties VIII, 475–479
constitution of commissions .. VIII, 476–478
demilitarized zones ..... VIII, 478
financial provisions ..... VIII, 479
nature of extent of ..... VIII, 479
limitation of ..... VII, 44, 79–80, 149–162, 490
limitation of national expenditures VIII, 472–473
mixed committee of jurists ..... VIII, 469
Permanent Advisory Commission on — VIII, 462–463
duties ..... VIII, 465
meetings ..... VII, 146; VIII, 465
private manufacture of implements of war ..... VIII, 468–469
reduction of —
bacteriological warfare VII, 15; VIII, 471; IX, 237
by League of Nations ..... VII, 146
chemical warfare VII, 153–154; VIII, 471–472
coordination commission .... VIII, 465–468
committee of the Council ..... VIII, 467
consultative members ..... VIII, 467
meetings ..... VIII, 468
Covenant provision ..... VIII, 463
demilitarized zones ..... VIII, 478, 483
draft treaty of mutual assistance .. VIII, 481
extension of principles of Washington naval treaty ..... VIII, 473
extension of right of investigation VIII, 474–480
First and Third Committees of Assembly ..... VIII, 432–434
general conference ..... VIII, 480–484
League action on ..... IX, 574
protocol ..... VIII, 480
study committee on questionnaire VIII, 469
under Protocol ..... VII, 449–450
Temporary mixed Commission—VIII, 465–468
development ..... VIII, 466
land and air armaments ..... VII, 149
meetings ..... VII, 148; VIII, 466
members ..... VIII, 467
mutual guaranty ..... VII, 148
subcommissions ..... VII, 149
trade in war materials ..... VIII, 470–471
see also League of Nations, Armaments, reduction of.
"The Armaments Yearbook of the League of Nations" ..... VIII, 34
Armenian refugees ..... VIII, 415; IX, 313–315
Armitage-Smith, S. A. ..... VIII, 306
Arms, international traffic in ..... VII, 151

PAGE

Arms Traffic Convention, 1919.....VII, 14
Armstrong, Dr. C.
VII, 23, 107, 205; VIII, 385, 503
Arnhold, Herr.....VIII, 326
Aroma, Pasquale d'
VII, 216; VIII, 515; IX, 277
Aron, M.....VIII, 307
Asari, Z.....VII, 144; VIII, 593
Aschieri, A.....VIII, 508
Aschmann, Gottfried.....VIII, 194
Asia, Japanese residents in.....VII, 283
Assembly of League of Nations, see League of Nations, Assembly.
Asser, M.....IX, 468
Astor, Viscount.....VII, 199; VIII, 495
Atherton, Frank C.....VIII, 5
Attolico, Bernardo D.....VII, 120, 121; VIII, 401, 402; IX, 166, 167
Australia:
agreement with Germany, Aug. 30, 1924
VIII, 257–261
arbitration treaties.....IX, 602
budget unit of League of Nations...VIII, 405
dictation test for Japanese immigration
VII, 339
disabilities against immigrants.....VII, 340
exclusion of Japanese.....VII, 296
immigration.....VII, 333, 339–340
Japanese residents in.....VII, 283
mandate for German Pacific islands south of Equator.....VIII, 489
mandate for Nauru.....VIII, 489
member —
conference of signatories to Protocol of Signature of Court.....IX, 624
International Labor Organization
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 585
Second Opium Conference.....VIII, 192
naturalization laws.....VII, 340
population density.....VII, 282
Post and Telegraph Act.....VII, 333
reparation percentage under Experts' plan.....VIII, 305
signatory of protocol of World Court..IX, 567
signed protocol of London Conference
VIII, 236–237
"Australia, New Zealand and some Islands of the South Seas" by Frank G. Carpenter.....VIII, 9
Austria:
abolition of visas.....VIII, 529
admission to League of Nations....IX, 16, 17
appeal to Supreme Council.....VII, 185
arbitration treaties —
Czechoslovakia, 1921, 1926....IX, 596, 600
Hungary, 1923.....IX, 596

PAGE

Austria — Continued.
Poland, 1923, 1926.....IX, 597, 600
Serb-Croat-Slovene State.....IX, 600
Sweden, 1926.....IX, 600
Switzerland, 1924.....IX, 597
assistance to intellectuals.....VIII, 537
budget unit of League of Nations....VIII, 405
ceded territories.....VIII, 292
commissions exercising right of investigation.....IX, 244
financial reconstruction —
balance of loan.....IX, 226
commercial situation.....IX, 223
Commissioner-General's report....VII, 187
control of commissioner general....IX, 225
currency reform.....VIII, 455
foreign credits.....IX, 222
history of.....VII, 13, 185, 188; VIII, 451–455; IX, 220–228
industry and trade.....IX, 221
internal conditions.....IX, 223
Layton-Rist report.....IX, 220
loan from governments.....VIII, 452–453
progress of.....VII, 187–188
protocols relating to the.....VIII, 413
reduction of officials.....VII, 188; IX, 227
reform, program of.....VII, 186
stability of currency.....IX, 224
state timber industry.....IX, 224
survey by economic experts.....IX, 220
see also League of Nations.
frontier dispute with Hungary
VII, 176; VIII, 437
health service cooperation.....VII, 203
member —
conference of signatories to Protocol of Signature of Court.....IX, 624
European Health Conference.....VII, 204
International Labor Organization
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 585
minorities protection treaty.....VII, 237
optional clause of World Court signed
IX, 567
declaration.....IX, 639
permanent delegate to League of Nations
VIII, 620; IX, 156
protest at abrogation of capitulations in Turkey.....VII, 569
protocols of October 4, 1922.....VII, 186
reparation —
Belgian rights.....VIII, 282
Greek percentage.....VIII, 283
Rumanian percentage.....VIII, 283
signatory of protocol of World Court.IX, 567
treaty with Switzerland on conciliation commissions.....VIII, 412

PAGE

Austria-Hungary:
arbitration settlements.....IX, 476
declaration of war against by United States.....VII, 572
Avenol, Joseph A.
VII, 120; VIII, 401, 513; IX, 166
Avery, Samuel.....IX, 544
Avila, Arturo R.....IX, 643
"The Awakening of Asia" by Henry Mayers Hyndman.....VIII, 15

Babinski, Léon.....IX, 626, 638
Bache-Wiig, Ruth.....VII, 10, 109; VIII, 388
Bacher, Edward L.....VII, 15, 106; VIII, 385
Bacon, Augustus O.....IX, 532
Bacteriological warfare
VII, 15; VIII, 471; IX, 237
Bagshawe, Dr. A. G.....VIII, 506
Baker, Henry F.....VII, 34
Baker, Dr. Josephine
VII, 21, 110; VIII, 389, 545; IX, 303
Baldwin, J. G.
VII, 208, 209; VIII, 524, 530, 532
Baldwin, Stanley.....IX, 155
Balfour, Dr. Andrew.....VIII, 505, 506
Balfour, Lord Arthur James. VII, 186; VIII, 452
Ballobar, Conde de.....VII, 235
Baltic conference on non-fortification and neutralization of Aaland Islands
VII, 166; VIII, 428
Baltic States.....VII, 240
Bancroft, Hubert Howe.....VIII, 7
Bandini, Princess Christina Giustiniani. VIII, 547
Baptist World Alliance.....VII, 35
Barbosa, Ruy.....VII, 86; IX, 473
Barboza Carneiro, Julio A.
VII, 215; VIII, 403, 467, 469, 511; IX, 238, 267, 272
Barboza de Magalhães, Vilhena
VIII, 422; IX, 187, 188, 544
Barcelona conference on communications and transit.....VII, 210; VIII, 91, 525
Barreto, Anselmo.....IX, 543
Bartens, M.....VIII, 566
Barthou, Louis.....VIII, 230, 239
Bartlett, Alice C.....VII, 10, 109; VIII, 388
Bashford, James Whitford.....VIII, 11
Basso, Dr.....VIII, 504
Batum.....VII, 576
Bau, Mingchien Joshua.....VIII, 15, 23
Baud-Bovy, Daniel.....IX, 298
Baudouin-Bugnet, M.....VII, 216
Bauer, Charles C.....VII, 35
Beau, M.....VII, 235; VIII, 490
Bedreag, M.....VIII, 532
Beer, George L.....VII, 10
Beernaert, M.....IX, 468
Beichmann, Frederik Valdemar Nikolai
VII, 127; VIII, 582; IX, 544
Belcourt, N. A.....VIII, 257

PAGE

Belgium:
abolition of visas.....VIII, 529
agreement regarding distribution of Dawes annuities.....VIII, 276–291
agreement with Germany, Aug. 30, 1924.....VIII, 257–261
arbitration —
blockading powers preference.....IX, 468
arbitration settlements.....IX, 476
arbitration treaties —
Denmark, 1905.....IX, 591
Ecuador, 1887.....IX, 588
Germany (Locarno). IX, 24, 38, 60–66, 599
Greece, 1905.....IX, 591
index of.....IX, 587–607
Italy, 1910.....IX, 592
Nicaragua, 1906.....IX, 591
Rumania, 1905.....IX, 591
Russia, 1904.....IX, 590
Spain, 1905.....IX, 590
Sweden, 1904, 1926.....IX, 590, 600
Switzerland, 1904, 1925.....IX, 590, 598
Venezuela, 1884.....IX, 588
army of occupation, cost of.....VIII, 278, 286
budget unit of League of Nations...VIII, 405
claims under Art. 296 of treaty of Versailles.....IX, 579
debt payment on acquired territory VIII, 293
debt to United States.....VIII, 271
declarations to German minister, Sept. 26, 1925.....IX, 53
Franco-Belgian notes, Sept. 10–15, 1920
IX, 12
health service, international cooperation
VII, 203
invitation to Germany to Locarno Conference.....IX, 50
letter to Chancellor Marx, Aug. 16, 1924
VIII, 233
Locarno settlement.....IX, 1–75
mandates for —
Ruanda-Urundi.....VIII, 489
member —
conference of signatories to Protocol of Signature of Court.....IX, 624
European Health Conference.....VII, 204
International Labor Organization
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 380; IX, 142
Permanent Advisory Commission on Armaments.....VII, 146
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
occupation costs to Apr. 30, 1921....VIII, 268
optional clause of World Court signed. IX, 567
declaration.....IX, 640
party to guaranty on Rhineland.....IX, 37
passports.....VIII, 528

PAGE

Belgium — Continued.
public health personnel interchange..VII, 203
receipts from Ruhr occupation.....VIII, 284
reparation —
approval of Experts' plan.....VIII, 224
army of occupation costs
VIII, 298, 299, 300, 301
debit for allotted vessels under Spa protocol.....VIII, 287
expenses charged against payments
VIII, 297
payments Nov. 11, 1918–Feb. 28, 1925
VIII, 295–296
percentage under Experts' plan
VIII, 304–305
priority under Dawes annuities...VIII, 282
Rhineland agreement.....VIII, 294
Ruhr occupation.....IX, 13
share of Dawes annuities.....VIII, 281
signatory of Locarno Conference documents.....IX, 24
signatory of Protocol for Pacific Settlement of International Disputes.VII, 391
signatory of protocol of London Conference.....VIII, 236–237
signatory of protocol of World Court..IX, 567
treaty with United States on mandate for Ruanda-Urundi.....VII, 24
Wadsworth agreement with United States on army costs
VIII, 268, 270, 272, 274, 280
war debt.....VIII, 280–281, 299, 300, 301, 302
liquidation of.....VIII, 270–271
Bell, Sir Francis H. Dillon.....IX, 626, 628, 638
Bell, Henry.....VIII, 309
Bellegarde, Louis-Dante.....VIII, 493
Bello-Codesido, Emilio.....IX, 160
Bemelmans, M.....VIII, 307
Benes, Edouard.....VII, 186, 393, 414, 553; VIII, 452, 619; IX, 155, 180
Bergmann, Karl.....VIII, 326; IX, 315
Bergson, Henri..VII, 225; VIII, 536, 540, 542; IX, 296
Berlage, O. H.....IX, 171
Berlin, treaty of, 1878.....VII, 581
Bernard, Léon..VII, 107, 202; VIII, 497, 499, 505, 508, 546; IX, 264, 303
Bernstein, Herr.....VIII, 566
Bethmann-Hollweg, Chancellor von....IX, 53
Bevilaqua, Clovis.....VII, 125; VIII, 530
Beyens, Baron.....VII, 165; VIII, 426
Biancardi, Dionigi.....VIII, 530
Bianchi, João de.....VIII, 237
Bianchini, Comdr.....VII, 215; VIII, 467, 511
Bibliography.....VII, 16; VIII, 540
Bibliography of Industrial Hygiene..VIII, 593
Bicknell, Col. Ernest P.....VIII, 380
Bignami, Paolo.....VIII, 533
Bigourdan, C.....VII, 213; VIII, 535
Bilfeldt, O.....VIII, 534

PAGE

Bills of exchange.....VIII, 521
Biological remedies, conference on the standardization of.....VII, 23, 107
Birchanteau, Signor.....VIII, 133
Blackman, Comdr. C. M.....IX, 167
Blaha, Col. Sylvestr.....VII, 147
Blakeslee, George Hubbard.....VIII, 23
Bland, John Otway P.....VIII, 16
Blau, Jean.....VII, 216; VIII, 515; IX, 277
Blinisbti, Benoît.....VIII, 189, 191, 194, 620
Bliss, Genl. Tasker H.....VII, 391, 488
Blue, Dr. Rupert..VII, 17, 20, 22, 105, 195, 196; VIII, 78, 382, 553, 554
Boatwright, F. W.....VII, 34
Bolivia:
arbitration settlements.....IX, 476
arbitration treaties —
Argentina, 1902, 1921.....IX, 590, 596
Brazil, 1909.....IX, 592
Colombia, 1918.....IX, 595
index of.....IX, 587–607
Italy, 1911.....IX, 592
Peru, 1863, 1873, 1901, 1918
IX, 588, 590, 595
Spain, 1902.....IX, 590
United States, 1909, 1914.....IX, 523, 593
Uruguay, 1917.....IX, 594
Venezuela, 1919.....IX, 595
budget unit of League of Nations...VIII, 495
coca leaves —
eating of.VIII, 45–46; VIII, 105, 110, 139
production of.....VIII, 47
use of.....VIII, 42
commission of inquiry —
treaty with United States, 1914....IX, 542
member —
International Labor Organization
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
population density.....VII, 252
signatory of protocol of World Court.IX, 567
Bonin-Longare, Count.....VII, 148
Bonnecarrère, M.....IX, 238
Bonnet, G.....VIII, 534
Bonnevie, Dr. Kristine..VII, 225; VIII, 536, 540; IX, 295
Bonzon, Alfred.....VIII, 576
Booth, Willis H. VII, 15, 106, 213; VIII, 384, 535
Borah, William E.....VII, 393; IX, 538
Borchard, Selma.....VII, 34
Borden, Sir Robert L.....IX, 544
Borduge, M.....VIII, 515; IX, 277
Borel, Eugène.....IX, 219
Borges, E. Gil.....VIII, 136
Bose, Sir J. Chandra
VII, 225; VIII, 536; IX, 295

PAGE

Botella, Cristobal.....VIII, 421; IX, 188
Bouckaert, M.....VIII, 532
Boudreau, Frank G.....VIII, 385; IX, 258
Bourgeois, D.....VIII, 532
Bourgeois, Léon.....VII, 102, 225
Bourgois, G..VII, 195, 198; VIII, 189, 194, 552; IX, 306
Bowman, Dr. Isaiah.....VII, 488
Boyden, Roland W. VII, 12, 13, 105; VIII, 382
Boynton, Nehemiah.....VII, 34
Braam van Vloten, P. van.....VIII, 531
Bradbury, Sir John.....VIII, 230, 239
Brandegee, Frank B.....VII, 39
Branting, Hjalmar.....VII, 148
Bratiano, Vintila.....VIII, 276, 291
Brazil:
agreement regarding the distribution of Dawes annuities.....VIII, 276–291
arbitration —
constitution provides for.....IX, 458, 464
arbitration settlements.....IX, 476
arbitration treaties —
Argentina, 1828, 1905, 1923, 1923 IX, 587, 591, 594, 596
Bolivia, 1909.....IX, 592
Chile, 1899, 1923, 1923....IX, 589, 594, 596
China, 1909.....IX, 592
Colombia, 1923.....IX, 596
Costa Rica, 1909.....IX, 592
Cuba, 1909, 1923.....IX, 592, 596
Denmark, 1911.....IX, 592
Dominican Republic, 1910, 1923 IX, 592, 596
Ecuador, 1909, 1923.....IX, 592, 596
France, 1909.....IX, 591
Great Britain, 1909, 1919.....IX, 592, 595
Guatemala, 1923.....IX, 596
Haiti, 1910, 1923.....IX, 592, 596
Honduras, 1909, 1923.....IX, 591, 596
index of.....IX, 587–607
Italy, 1911.....IX, 592
Mexico, 1909.....IX, 591
Nicaragua, 1933.....IX, 596
Norway, 1909.....IX, 592
Panama, 1909, 1923.....IX, 591, 596
Paraguay, 1911, 1923.....IX, 592, 596
Peru, 1909, 1918.....IX, 592, 595
Portugal, 1909.....IX, 591
Russia, 1910.....IX, 592
Salvador, 1909.....IX, 592
Spain, 1909.....IX, 591
Sweden, 1909.....IX, 592
Switzerland, 1924.....IX, 597
United States, 1909, 1914, 1923 IX, 523, 594, 596
Uruguay, 1916, 1923.....IX, 594, 596
Venezuela 1909, 1923.....IX, 591, 596
attitude at Second Hague Conference..IX, 473
attitude on Protocol for Pacific Settlement.....IX, 179

PAGE

Brazil — Continued.
budget unit of League of Nations....VIII, 405
commission of inquiry —
treaty with United States 1914.....IX, 544
Japanese emigration to.....VII, 282
Japanese residents in.....VII, 283
member —
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Advisory Commission on Armaments.....VII, 146
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
optional clause of World Court signed IX, 567
declaration.....IX, 640
permanent delegate to League VIII, 620; IX, 156
population density.....VII, 282
signatory of protocol of World Court. IX, 567
treaty with Switzerland on conciliation commissions.....VIII, 412
Breasted, James Henry.....VIII, 539
Brenier, Henri..VII, 195, 198; VIII, 127, 130, 553; IX, 306
Brent, Bishop Charles Henry:
"An Appeal to My Colleagues". VIII, 159–165
member of Advisory Committee on Traffic in Opium.....VII, 17, 105, 195, 196
member of American Committee, 5th sess., League opium committee VIII, 54, 78, 95, 100, 104, 127, 382, 554
speech on U. S. opium policy..VIII, 78–79
statement at Senate hearings on World Court.....VII, 33, 41–46
Breton, G.....VIII, 530
Briand, Aristide:
declaration on optional clause of World Court.....IX, 642
member of Painlevé cabinet.....IX, 34
note to Germany, Sept. 29, 1925.....IX, 52
president of Council of League..IX, 202, 203
signatory of Geneva Protocol VII, 553; VIII, 619
signatory of Locarno agreements...IX, 155
speech at Locarno conference.....IX, 9
speech on Protocol for Pacific Settlement IX, 177
telegram on deposit of Locarno treaties IX, 184
vice-president of Sixth Assembly....IX, 161
work on Protocol for Pacific Settlement VII, 393
Brierly, James Leslie..VIII, 421; IX, 187, 188
Brinkley, Capt. Frank.....VIII, 9
Bristol, Adml. Mark L.....VII, 574, 582
Bristow, Joseph L.....IX, 538

PAGE

British Empire:
attitude on Protocol for Pacific Settlement IX, 173
bibliography.....VIII, 8
declaration on signing First Opium Conference protocol.....VIII, 175
member —
First Opium Conference.....VIII, 169
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
position of Dominions at international conferences.....VIII, 232
position of Dominions on reparation. VIII, 226
reparation —
approval of Experts' plan.....VIII, 224
expenses charged against payments VIII, 297
opposition to treaty of guaranty..VIII, 226
payments Nov. 11, 1918–Feb. 28, 1925 VIII, 295–296
percentages under Experts' plan VIII, 304–305
signatory of protocol of World Court. IX, 567
see also Great Britain.
Brivonesi, Capt. Bruno.....VIII, 402; IX, 167
Brockmann, Guillermo VII, 208; VIII, 524, 530, 533
Broin, M.....VIII, 534
Brooks, Dr. Gilbert.....IX, 259
Broukère, M. de.....IX, 160
Brown, Arthur Judson.....VII, 34; VIII, 21
Brown, F. J.....VIII, 534
Brown, Philip Marshall.....VII, 527
Brownlee, Dr. J.....VIII, 508
Bruins, G. W. J..VII, 216; VIII, 514; IX, 278
Brujins, M.....VIII, 309
Brumpt, Prof.....VIII, 504
Brun, Constantin.....IX, 543
Brunet, Jules VII, 215; VIII, 511, 521; IX, 267
Brunyate, Sir James.....VII, 143
Brussels declaration of 1890.....IX, 255
Brussels International Financial Conference VII, 105; VIII, 510
Bryan, William Jennings:
telegram on Tampico incident.....IX, 487
treaties for advancement of peace.....IX, 534
Bryce, James.....VIII, 8
Bryce, Lloyd.....VIII, 133
Buchanan, Sir George VII, 202; VIII, 497, 499, 505, 506, 507
Buell, Raymond Leslie.....VIII, 18, 19, 27, 33
"The International Opium Conferences" VIII, 35–194
"Japanese Immigration".....VII, 277–380
"Problems of the Pacific".....VIII, 1–34
Buero, Dr. Enrique E.....IX, 234, 627
Bugge-Wicksell, Anna.....VII, 235; VIII, 491

PAGE

Bulgaria:
admission to League of Nations.....IX, 17
arbitration —
claims under treaty of Neuilly...VIII, 363
settlements.....IX, 476
armed bands on frontiers..VII, 175; VIII, 436
budget unit of League of Nations...VIII, 405
claims against.....VIII, 363
commissions exercising right of investigation.....IX, 244
dispute with Greece.....IX, 201–217
emigration to Greece.....VII, 241–242
Greco-Bulgarian emigration commission VIII, 572–574
Greek minorities in.....IX, 317
indemnity received from Greece.....IX, 211
malaria.....VIII, 504
member of —
conference of signatories of Protocol of Signature of Court.....IX, 625
European Health Conference.....VII, 204
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
minorities protection treaty.....VII, 237
optional clause of World Court signed. IX, 567
declaration.....IX, 649
permanent delegate to League VIII, 620; IX, 156
property in Greece.....VIII, 370
reparation —
Belgian rights.....VIII, 282
clauses of treaty of Neuilly.....VIII, 370
payments under protocol of Sofia, Mar. 21, 1923.....VIII, 289
Reparation Commission redistribution VIII, 370
request of United States to share in reparation.....VIII, 274–275
signatory of Protocol for Pacific Settlement of International Disputes. VII, 391
signatory of protocol of World Court. IX, 567
statements to Council in dispute with Greece.....IX, 205
summary procedure on reparation..VIII, 370
territories ceded.....VIII, 292
wartime relations with United States. VII, 572
Bullard, Arthur.....VII, 12, 109
Buol-Schauenstein, Count Charles Ferdinand de.....IX, 462
Bureau of Social Hygiene of New York VII, 222; VIII, 547
Burge, M. R. K.....VII, 144; VIII, 593
Burma, illicit opium consumption.....VIII, 68
Burnet, Sir John J.....IX, 171
Burniaux, Mlle.....IX, 303

PAGE

Burton, Theodore E.:
statement on American adherence to the World Court.....VIII, 210–214, 383
Bustamante, Antonio Sanchez de VII, 86, 127; VIII, 582
Buti, Gino.....VIII, 237
Butler, Harold Beresford..VII, 143; VIII, 592
Butler, Nicholas Murray.....VII, 35
Butler, Thomas S.....VII, 35
Buxton, Major A...VII, 121; VIII, 402; IX, 167
Bywater, Hector C.....VIII, 33

Cabrera, Luis.....IX, 442
Cabrini, Angelo.....VII, 144; VIII, 593
Caclamanos, D.....VIII, 257; IX, 190, 319
Calboli, Marquis Paulucci de VIII, 545; IX, 303
Calderon, Ignacio.....IX, 468, 544
Calendar reform VII, 15, 106, 212–213; VIII, 534; IX, 291
California:
agricultural control of Japanese.....VII, 285
holdings of Japanese in.....VII, 285
Japanese birth rate in.....VII, 285
Japanese population in.....VII, 284
land area.....VII, 285
land under Japanese control.....VII, 285
California League of Women Voters...VII, 35
Calles, Plutarco Elías IX, 375, 378, 396, 397, 417, 422, 425
Calmette, Dr. Léon Charles Albert...VIII, 503
Calonder, Félix...VII, 165, 172; VIII, 426, 434
Caloyanni, M.....VIII, 356
Calvello, G. de la Tour.....VIII, 128, 130, 135
Cameroons, the.....VII, 24, 235, 299
Cameroons, British.....VIII, 489
Cameroons, French.....VIII, 489
Campbell, Sir John VII, 195; VIII, 460, 552; IX, 306
Campbell, Persia Crawford.....VIII, 25
Campbell, W. W.....VII, 318
Campenhout, Dr. E. van.....VIII, 506
Campion, C. A. B.....VII, 215; VIII, 511
Canada:
agreement with Germany, Aug. 30, 1924 VIII, 257–261
arbitration treaties.....IX, 602
Borden-Nakamura correspondence..VII, 337
budget unit of League of Nations....VIII, 405
gentlemen's agreement with Japan..VII, 336
health service, international cooperation VII, 203
immigration.....VII, 334–339
Japanese residents in.....VII, 283
Japanese treaty of 1894 rejected....VII, 335
member —
conference of signatories of Protocol of Signature of Court.....IX, 625
International Labor Organization VII, 138; VIII, 585

PAGE

Canada — Continued.
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
naturalization laws.....VII, 339
permanent delegate at Geneva VIII, 620; IX, 155, 156
population density.....VII, 282
property rights of aliens.....VII, 338
reparation percentage under Experts' plan.....VIII, 305
restriction of Japanese immigration..VII, 297
signatory of protocol of World Court..IX, 567
signed protocol of London Conference VIII, 236–237
treaty of 1911 between British Empire and Japan.....VII, 336
Cancer.....VIII, 504
Cannon, Dr. Walter B..VII, 14, 109; VIII, 388
Canny, G. B.....VIII, 515; IX, 277
Cantacuzène, Jean.....VIII, 497
Canterbury, Archbishop of.....VII, 213
Caprivi Zipfel.....IX, 248
Carapanos, Alexander.....IX, 204, 205, 206
Carelia, Eastern.....VIII, 343
Carlier, Jules.....VIII, 590
Carlin, M.....VIII, 136
Carnegie, Andrew.....IX, 497
Carnegie, Col. David.....VII, 148
Carnegie Endowment for International Peace.....VII, 8; IX, 549
Carolan, Edgar.....VII, 15, 106; VIII, 385
Carozzi, Luigi.....VIII, 592
Carpenter, Frank G.....VIII, 9
Carpenter, J. Estlin.....VIII, 32
Carr-Saunders, A. M.....VIII, 24
Carranza, Venustiano IX, 343, 344, 346, 347, 348, 351
Carrière, Dr. H. VII, 202; VIII, 497, 499, 505, 507; IX, 306
Carthill, Al.....VIII, 22
Carton de Wiart, Count...VIII, 545; IX, 542
Carvalho, Comdr. E. de VIII, 463, 467; IX, 238
Casares, J.....IX, 299
"The Case of Korea" by Henry Chung VIII, 21
"The Case of Singapore" by M. S. Woodhouse.....VIII, 34
Castberg, Dr. Frede.....IX, 626, 637
Castenskjold, W. Grevenkop.....VIII, 133, 135
Castro, A. de.....VII, 225; VIII, 536; IX, 295
Castro, Jacinto R. de.....IX, 641
Catastini, V.....VIII, 402; IX, 166
Cavara, Fridriano.....IX, 311
Cayla, Victor.....IX, 311
Cecil, Viscount, of Chelwood VII, 148; VIII, 94–98, 107, 112, 113

PAGE

Central American Court of Justice:
Bryan-Chamorro treaty disputes.....IX, 543
decisions of .....IX, 548
establishment of.....IX, 547
expired by limitation.....IX, 549
treaty rights on Gulf of Fonseca.....IX, 543
Central American Peace Conference IX, 547, 550
Central American peace system:
annual conferences.....IX, 547
Court of Justice.....IX, 546
development of common interests IX, 547, 550
extradition, convention on.....IX, 547, 550
pedagogical institute.....IX, 546, 547, 550
railroad system.....IX, 547, 550
Central Commission for Rhine Navigation VIII, 532; IX, 239
Central Conference of American Rabbis..VII, 34
Central International Office for the Control of the Liquor Traffic in Africa..VIII, 564
Certificates of identity to Russian refugees, July 5, 1922.....VIII, 412
Ceuninck, Lt. General de..VII, 146; VIII, 463
Ceylon, opium policy.....VIII, 41
Chagas, Dr. Carlos.....VIII, 497, 506
Chagas, João.....VII, 553; VIII, 619
Chaix, E.....VIII, 534
Chalmers, Henry.....VII, 15, 105; VIII, 383
Chalmers, Sir Mackenzie..VII, 217; VIII, 521
Chamber of Commerce, attitude on Permanent Court.....VII, 33, 81–83
Chamberlain, Sir Austen:
deposit of Locarno ratificatinns..IX, 133, 184
Locarno conference correspondence..IX, 34
objection to Protocol for Pacific Settlement.....IX, 16
rapporteur on Bulgaro-Greek dispute IX, 211, 319
Saar territory protection.....IX, 328
signatory of Locarno agreements.....IX, 155
speech on Protocol for Pacific Settlement IX, 173, 176
statement on American adhesion to World Court.....IX, 620
vice-president of Sixth Assembly.....IX, 161
Chamberlain, Basil Hall.....VIII, 9
Chamberlain, George E.....IX, 533
Chamberlain, Dr. Joseph P.....VII, 488
"The Changing Chinese" by Edward Alsworth Ross.....VIII, 11
Chaponnière-Chaix, Mme.....VIII, 545
"The Character of Races" by Ellsworth Huntington.....VIII, 29
Chardigny, Col.....VIII, 429
Charoon, Prince VII, 195; VIII, 552, 620; IX, 627, 638
Chemical warfare VII, 14, 109, 153–154; VIII, 471; IX, 237
Chemistry, uses of, in warfare.....VII, 153
Chen, Ta.....VIII, 26

PAGE

Ch'eng, Liang.....VIII, 127, 130
Chester, Samuel H.....VII, 34
Child, Richard Washburn:
capitulations, statement on.....VII, 584
statement on American representation at Lausanne Conference...VII, 583–584
Child Welfare, International Association for the Promotion of.....VII, 245–246
Chile:
arbitration settlements.....IX, 476
arbitration treaties —
Argentina, 1902, 1923....IX, 590, 594, 596
Brazil, 1899, 1923.....IX, 589, 594, 596
Colombia, 1923.....IX, 596
Cuba, 1923.....IX, 596
Dominican Republic, 1923.....IX, 596
Ecuador, 1923.....IX, 596
Great Britain, 1919 .....IX, 595
Guatemala, 1923.....IX, 596
Haiti, 1923.....IX, 596
Honduras, 1923.....IX, 596
Italy, 1913.....IX, 593
Nicaragua, 1923.....IX, 596
Panama, 1923.....IX, 596
Paraguay, 1923.....IX, 596
Sweden, 1920.....IX, 596
United States, 1909, 1914, 1923 IX, 523, 594, 596
Uruguay, 1915, 1923.....IX, 594, 596
Venezuela, 1923.....IX, 596
budget unit of League of Nations...VIII, 405
commission of inquiry —
treaty with United States, 1914...IX, 542
member —
International Labor Organization VII, 133; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 531
Second Opium Conference.....VIII, 192
permanent delegate to League VIII, 621; IX, 156
population density.....VII, 232
signatory of protocol of World Court..IX, 567
Chilton, Horace.....IX, 508
China:
arbitration settlements.....IX, 476
arbitration treaties —
Brazil, 1909.....IX, 592
Netherlands, 1915 .....IX, 594
United States, 1903, 1914.....IX, 523, 594
arrangement with Great Britain on opium export.....VIII, 48
attitude at First Opium Conference VIII, 89–91
bibliography.....VIII, 10, 18
budget unit of League of Nations...VIII, 405
commission of inquiry —
treaty with United States, 1914 ..IX, 542

PAGE

China — Continued.
denunciation of treaty of 1894 with United States.....VII, 320
edict of Sept. 20, 1906, commanding eradication of opium production.....VIII, 48
exclusion laws.....VII, 287
Government attitude on opium growing VIII, 48
illegal production of opium.....VIII, 154
member —
Advisory Committee on Traffic in Opium.....VII, 195
conference of signatories of Protocol of Signature of Court.....IX, 625
First Opium Conference.....VIII, 169
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
opium —
acceptance of inquiry proposal...VIII, 111
anti-opium laws unenforced.....VIII, 49
attack on opium policy.....VIII, 88
attitude on American proposals...VIII, 97
conferences, invitation to.....VIII, 83
cultivation revived, 1918.....VIII, 49
curtailment of production.....VIII, 110
failure to inquire into poppy-growing VIII, 50
member of antismoking conference VIII, 87
position stated by Dr. Sze.....VIII, 89
production in 1922–1924....VIII, 47, 48, 49
regulations on extra territorials...VIII, 74
smuggling.....VIII, 68
withdrawal from opium conference VIII, 99
optional clause of World Court signed IX, 567
declaration.....IX, 640
permanent delegate to League VIII, 621; IX, 156
political condition.....VIII, 90
production of opium.....VIII, 48–50
signatory of protocol of World Court IX, 567
statement of representative on opium problem.....VIII, 69
treaties regarding immigration into United States.....VII, 319–327
"China, An Interpretation" by James Whitford Bashford.....VIII, 11
"China at the Conference" by W. W. Willoughby.....VIII, 18
"China in the Family of Nations" by Henry T. Hodgkin.....VIII, 11
"China, Japan and Korea" by John Otway P. Bland.....VIII, 17
'China: Yesterday and To-day" by Edward T. Williams.....VIII, 11
Chinda, Viscount.....VII, 102

PAGE

"Chinese Coolie Emigration to Countries within the British Empire" by Persia Crawford Camphell.....VIII, 25
"Chinese Immigration" by Mary E. Burroughs Roberts Coolidge.....VIII, 26
"Chinese Migrations, with special reference to Labor Conditions" by Ta Chen VIII, 26
Chirol, Sir Valentine.....VIII, 22
Chodzko, Dr. Witold VII, 202; VIII, 190, 194, 497, 505, 507
Chogas, Dr. Carlos.....VII, 202
Cholera and typhoid vaccination.....VII, 103
Christian Science Relief of America....VIII, 550
"Christianity and the Race Problems" by J. H. Oldham.....VIII, 23
Christophers, Col.....VIII, 504
Chu, Chao-Hsin VII, 195; VIII, 552; IX, 306, 625
Chuard, J.....VIII, 533
Chung, Henry.....VIII, 21
Church Peace Union.....VII, 34, 77
Churchill, Winston S.....VIII, 276, 291
Ciotori, D. N.....VIII, 237
Ciraolo, Giovanni.....VIII, 566
Ciuca, Prof.....VIII, 504
"The Civilization of China" by Herbert Allen Giles.....VIII, 10
Claims conventions.....IX, 374, 431–440, 486
Clarendon, Lord.....IX, 460, 461
Clark, John Bates.....VII, 483
Clarke, John H. "A Popular Discussion of the Protocol".....VII, 509–517
Clauzel, Comte.....IX, 625
Clavier, M.....VII, 216; VIII, 515; IX, 277
Clayton, Harold.....VIII, 103, 106, 169, 172
Clearing offices.....IX, 579
Clemenceau, Georges.....IX, 10
Clemens, Jeremiah.....IX, 489
Clémentel, M.....VIII, 276, 291, 303, 304
Coats, R. H.....VIII, 508
Cobb, Howell.....IX, 433
Cobian, Eduardo.....VIII, 467; IX, 233
Cohlenz, Adolph.....VII, 34
Coca leaf:
Bolivian memorandum defending eating of.....VIII, 42, 45–46
producers invited to conferences....VIII, 82
production in Peru.....VIII, 47
Cocaine, uses of.....VIII, 39–46
Codesido, Emilo Bello.....VIII, 621
Codt, Henri de.....IX, 542
Coebergh, J. B. M.....VIII, 139, 194
Cohen, S.....VII, 221; VIII, 545; IX, 303
Colban, Erik Andreas VII, 120; VIII, 402; IX, 167
Colby, Bainbridge.....VII, 23
Colby, Everett, statement on American entrance into the Permanent Court of International Justice.....VII, 89–90

PAGE

Coleman, Dr. Algernon..VII, 16, 108; VIII, 387
Collins, William Job.....VIII, 127, 130, 133
Collis, Dr .....VIII, 507
Collonna de Walewski, Count Alexander IX, 462
Colombia:
arbitration settlements.....IX, 476
arbitration treaties —
Argentina, 1912.....IX, 592
Bolivia, 1918.....IX, 595
Ecuador, 1856, 1905.....IX, 587, 591
Peru, 1829, 1870, 1905 ....IX, 587, 588, 591
Salvador, 1880 .....IX, 588
Spain, 1894, 1902.....IX, 589, 590
Uruguay, 1918 .....IX, 595
Venezuela, 1842 .....IX, 587
budget unit of League of Nations....VIII, 405
member —
International Labor Organization
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 380; IX, 142
Permanent Court of International
Justice.....VIII, 581
population density.....VII, 282
signatory of protocol of World Court
IX, 567
"Colonial Tariff Policies".....VIII, 22
Colt, LeBaron B.....VII, 357
Comert, Pierre....VII, 120; VIII, 401; IX, 166
Comité international d'Hygiène publique
VIII, 558
Commercial disputes, arbitration of....VII, 218
Commission of inquiry —
permanent commission.....IX, 540, 586
text of Franco-American treaty of Aug.
3, 1911 .....IX, 526
treaties providing for.....IX, 534
Commissioners under treaties for advance-
ment of peace.....IX, 543
Committee on Intellectual Cooperation, see
League of Nations.
Commons, John R.....VIII, 390
Communications and Transit:
advisory and technical committee —
calendar reform.....VII, 212–213
meetings.....VII, 207, 208
members.....VII, 208
Saar railroads opinion.....VII, 209
conciliatory commission.....IX, 578
conferences.....VII, 210–211
results.....VII, 211
hydraulic power.....VII, 211
maritime ports, convention on.....VII, 211
origin, provision of Covenant.....VII, 207
passports.....VII, 211–212
railways, convention on international
régime.....VII, 211
resolution of fifth session on reform of the
calendar.....VII, 213
Second General Conference on..VII, 105, 211

PAGE

Communications and Transit — Continued.
transmission in transit of electric power VII, 211
wireless.....VII, 212
see also League of Nations.
Comnène, Nicolas Petresco
VIII, 545, 629; IX, 229, 234, 303
"Comparative Religion" by J. Estlin
Carpenter.....VIII, 33
Compromisory clauses IX, 454, 456, 581, 582, 585
Conciliation:
commissions
VIII, 412–413; IX, 29, 573, 578, 583, 586
definition of.....IX, 451
treaties.....IX, 572
Confederation of Catholic Trades Unions
VIII, 336
Conference of Ambassadors, see Ambassa-
dors, Conference of.
Conference of Foreign Mission Boards..VII, 34
Conferences:
cooperation and statistics, 1919..VII, 214
First Hague.....IX, 462
international trade in arms VIII, 472; IX, 232
passport.....IX, 290
passports, customs formalities and
through tickets.....VIII, 528
reduction of armament...VII, 412–418, 452
road traffic.....IX, 291
Rome Emigration.....IX, 290
Second General on Communications and
Transit.....IX, 290
telegraphic.....IX, 293
"Conflict of Policies in Asia" by Thomas
Franklin F. Millard.....VIII, 16
Congregational Churches.....VII, 34
Congress of the Far Eastern Association of
Tropical Medicine.....VIII, 44
Conklin, Edwin Grant.....VIII, 30
Connecticut Federation of Churches....VII, 34
Constantinople, see Turkey.
Convention and statute on freedom of transit,
Apr. 20, 1921.....VIII, 409
Convention and statute on the international
régime of maritime parts.....VIII, 414
Convention and statute on the régime of
navigable waterways of international
concern, Apr. 20, 1921.....VIII, 409, 410
Convention and statute on the international
régime of railways.....VIII, 414
Convention for the control of the inter-
national trade in arms, munitions and
implements of war, June 17, 1925
VIII, 418, 472
Convention for the suppression of the traffic
in women and children, Sept. 30, 1921
VIII, 410
Convention relating to dangerous drugs,
Feb. 19, 1925 .....VIII, 418
Convention relating to the development of
hydraulic power.....VIII, 414

PAGE

Convention relating to the nonfortification and neutralization of the Aaland Islands, Oct. 20, 1921.....VIII, 412
Convention relating to the transmission in transit of electric power.....VIII, 414
Cook, Sir Joseph.....VIII, 257; IX, 160
Coolidge, Calvin, see President of the United States.
Coolidge, Mary E. Burroughs Roberts VIII, 26
Copenhagen Institute.....VIII, 503
Corfe, Col. A. C.....VII, 241; VIII, 573
Corfu, occupation of.....VII, 177–1813
Costa, Affonso.....IX, 643
Costa, H. M. Mendes da.....VIII, 135
Costa Rica:
arbitration settlements.....IX, 476
arbitration treaties —
Brazil, 1909.....IX, 592
Guatemala, 1895, 1923.....IX, 589, 596
Honduras, 1895, 1923.....IX, 589, 596
Italy, 1910.....IX, 592
Nicaragua, 1923.....IX, 596
Salvador, 1895, 1923.....IX, 589, 596
United States, 1909, 1914, 1923 IX, 523, 593, 596
budget unit of League of Nations...VIII, 405
Central American Court of Justice...IX, 546
commission of inquiry —
treaty with United States, 1914...IX, 542
compulsory jurisdiction of Permanent Court.....VII, 126
Corinto system.....IX, 546
decision of Central American Court on boundary treaty with Nicaragua IX, 548
immigrants from Asia excluded.....VII, 332
member —
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581; IX, 567
optional clause of World Court signed IX, 567, 640
Permanent Advisory Commission on Armaments, report on.....VII, 147
violation of San Juan river.....IX, 548
Council of League of Nations, see League of Nations.
Council of Women for Home Missions VII, 34
Court of arbitral disputes.....IX, 472–474
Court of International Justice, the Permanent:
action by United States Senate on protocol VIII, 207–216
action of President of United States....IX, 31
Advisory Committee of Jurists, membership.....VII, 125
advisory opinions —
acquisition of Polish nationality by German settlers.....VII, 134–135; VIII, 350–352, 584; IX, 100–102

PAGE

Court of International Justice, the Permanent — Continued.
agricultural labor and the International Labor Organization VII, 130; VIII, 337–338, 583; IX, 87–88
agricultural production and the International Labor Organization VIII, 338–339, 583; IX, 88–89
American adhesion.....IX, 570
American reservations on IX, 571, 615–617
delegates to International Labor Conference..VII, 129, 130; VIII, 335–337, 583; IX, 85–87
Eastern Carelia VII, 131–132; VIII, 343–345; IX, 93–95
exchange of Greek and Turkish populations..VIII, 336–339, 584; IX, 116–119
frontier between Poland and Czechoslovakia.....VII, 135–137; IX, 103–105
frontier between Turkey and Iraq IX, 128–130
German settlers in Poland..VII, 132–133; VIII, 348–350, 584; IX, 98–99
Jaworzina boundary question between Czechoslovakia and Poland VIII, 353–356, 584; IX, 103–105
monastery of Saint-Naoum and the Albanian frontier VIII, 360–363, 584; IX, 110–113
Polish postal boxes in Danzig VIII, 584; IX, 124–126
rendered....VII, 37, 129–137; IX, 568–569
Tunis-Morocco nationality decrees..VII, 130–131; VIII, 339–343, 584; IX, 89–93
American reservations VIII, 207–214, 334; IX, 83
Anglo-Saxon court procedure.....VII, 72
arguments against.....VII, 36
Art. 14 of Covenant of League.....IX, 565
budget of.....VII, 37; VIII, 404
cases decided VII, 127–129; VIII, 330–374; IX, 79–130
chronology.....IX, 82
Commission of Jurists for organizing VII, 8
comparison between Statute and work done at The Hague in 1907..VII, 50–51
comparison with Permanent Court of Arbitration.....VII, 85
comparison with Supreme Court of United States.....VII, 87–88
compulsory jurisdiction VII, 52, 394, 402, 485; VIII, 582
under Protocol.....VII, 424–426
conference of states signatories to Protocol of Signature —
American declination of invitation IX, 624
conclusions on American adhesion IX, 628–632
countries represented.....IX, 624
delegates to.....IX, 624

PAGE

Court of International Justice, the Permanent — Continued.
draft of protocol for American entrance with reservations.....IX, 634–638
final act.....IX, 623
meetings.....IX, 613
reservations to American adherence considered.....IX, 623
reservations of United States...IX, 628–632
dates in history of.....VIII, 333
decrees.....VII, 490
definition of "domestic jurisdiction" VII, 326–327
deputy-judges —
list of.....VII, 127; VIII, 582
description by Elihu Root.....VIII, 203
discussed by Bishop Charles H. Brent VII, 41–46
discussion by Elihu Root.....VII, 526–527
disputes arising under opium convention.....VIII, 187
domestic questions.....VII, 514, 515
draft of protocol for American entrance with reservations.....IX, 634–638
draft statute.....VIII, 580; IX, 566
Eastern Carelia question.....VIII, 445
election of the judges.....VII, 79; IX, 566
expenses of.....VII, 24
extract from revised rules.....IX, 632–634
extract from statement of William I. Hull before Senate Committee on Foreign Relations.....VII, 77
Finland's case against Russia.....VII, 38
frontier dispute between Turkey and Iraq.....IX, 128–130
hearings before United States Senate VII, 33–93
judges —
election of.....VII, 37; IX, 566
list of...VII, 127; VIII, 332, 582; IX, 84
selection of.....VII, 61, 63
judgments —
German interests in Polish Upper Silesia.....VIII, 583; IX, 126–128
Mavrommatis Jerusalem concessions VIII, 371–374, 583; IX, 121–124
Mavrommatis Palestine concessions VIII, 356, 360, 583; IX, 106–116
rendered.....IX, 568
S. S. *Wimbledon;* freedom of Kiel Canal VII, 127–129; VIII, 345–347, 583; IX, 95–97
treaty of Neuilly, interpretation..VIII, 363–365, 583; IX, 113–115, 119–121
jurisdiction.....IX, 567
conferred by treaty of Versailles...IX, 586
letter of Mar. 29, 1926, from Secretary-General of the League of Nations to Secretary of State of the United States.....IX, 618
letter of Secretary Hughes on optional clause.....IX, 479

PAGE

Court of International Justice, the Permanent — Continued.
meetings.....VII, 125; VIII, 580
members.....VIII, 581
members accepting compulsory jurisdiction.....VIII, 582
members of subcommittee of Committee on Foreign Relations.....VII, 39
minutes of League Council meeting, 39th session, on American adhesion...IX, 620
monastery of St.-Naoum.....VIII, 449
nature of cases to be submitted...VII, 54–55
note of American chargé d'affaires at Bern to Secretary-General of League..IX, 621
note of Secretary of State of the United States to Secretary-General.....IX, 617
optional clause, acceptance of VII, 52, 54, 261; VIII, 331; IX, 81, 612
optional clause, text.....IX, 639
organization of.....VII, 64, 65
organizations in favor of.....VII, 34–36
origin.....VII, 125; VIII, 580
position of United States regarding...VII, 37
preparation of list of jurists as Turkish advisers.....VII, 600
preparation of plan for.....IX, 565
president —
selected as arbitrator under Experts' plan.....VIII, 315–318
to arbitrate disputes under London conference protocol.....VIII, 249
protocol of signature, text VII, 261; IX, 638–639
protocol on American reservations IX, 634–638
publications of.....VII, 25
ratifications of protocol.....VIII, 409
relation to League of Nations....VII, 70–71
reservations of United States IX, 571, 615–617, 628–632
resolution of adhesion of United States IX, 615–617
resolution of U. S. House of Representatives.....VIII, 214
rules revised, extract from.....IX, 632–634
selection of judges.....VII, 72, 73, 84
settlement of disputes under opium convention of 1925.....VIII, 118
signatories of optional clause VII, 394; VIII, 331; IX, 81
special chambers.....VIII, 582
statement of —
Samuel Gompers.....VII, 93
Walker D. Hines.....VII, 81–83
Manley O. Hudson.....VII, 83–88
George W. Wickersham.....VII, 47–67
states accepting compulsory jurisdiction VII, 126, 394; VIII, 331; IX, 81
states signatory to the protocol VII, 126; VIII, 329; IX, 80, 612
states signing optional clause VII, 52, 54, 261; VIII, 331; IX, 81, 612

PAGE

Court of International Justice, the Permanent — Continued.
statute, text.....VII, 261–270; IX, 644–653
S.S. *Wimbledon* case.....VII, 127–129; VIII, 345–347, 583; IX, 127–129
submission of disputes under Allied-German agreement of Aug. 30, 1924 VIII, 261
submission of disputes under Locarno treaties.....IX, 27
terms of American entrance into.....IX, 620
testimony of President A. Lawrence Lowell on American entrance VII, 67–76
work of, from 1921–24.....VII, 85–88
Courtilet, Mr.....VII, 209
Covenant, see League of Nations.
Cox, Harold.....VIII, 24
Cox, James M.....IX, 544
Crane, C. R.....IX, 544
Cravath, Paul D.....VII, 35
Crawford, Ruth.....VII, 20; VIII, 391
Cremer, J. T.....VIII, 128, 130, 133, 135
Cremer, William Randal.....IX, 497
Crissey, C. I.....VII, 12, 110; VIII, 390
Crombrugge, Maj. Gen. van VII, 146; VIII, 463, 467
Crone, E. H.....VIII, 137
Crowdy, Dame Rachel VII, 121, 224; VIII, 194, 402; IX, 167
Crowe, Eyre A.....VIII, 257
Croxton, Fred C.....VII, 20, 110; VIII, 390
Cuba:
abolition of passports.....VIII, 528
arbitration treaties —
Brazil, 1909.....IX, 592
Italy, 1903.....IX, 590
budget unit of League of Nations...VIII, 405
Chinese immigration forbidden.....VII, 332
member —
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 531
Second Opium Conference.....VIII, 192
signatory of protocol of World Court IX, 567
Cuellar, Manuel.....VIII, 552; IX, 306
Culberson, Charles A.....IX, 533
Culbertson, William S.....VIII, 23
Cullom, Shelby M.....IX, 519–521, 531
Cumming, Dr. Hugh S..VII, 21, 105, 284, 202; VIII, 383, 497, 501, 507, 503
Cummings, Edward.....VII, 34
Cummins, Albert B.....IX, 537
Cuno, Dr.....IX, 33
Curchod-Secretan, Mme....VIII, 545; IX, 303
Curie-Sklodowska, Mme. VII, 225; VIII, 536, 549; IX, 295
Curzon, Lord.....IX, 198
Cushman, Emma D. VII, 19, 110; VIII, 389, 549

PAGE

Customs Formalities, International Conference on VII, 15, 211, 218–219; VIII, 516
Czechoslovakia:
agreement regarding the distribution of the Dawes annuities.....VIII, 276–291
arbitration treaties —
Austria, 1921, 1926.....IX, 596–600
France, 1924, 1925.....IX, 597, 74–75
Germany, 1925.....IX, 24, 72, 599
Poland, 1925.....IX, 593
Sweden, 1926.....IX, 599
attitude on Protocol for Pacific Settlement IX, 180
boundary with Poland.....VIII, 353
budget unit of League of Nations...VIII, 405
debt payment on territory.....VIII, 293
dispute over Hungarian boundary VII, 176; VIII, 438
health service, international cooperation VII, 203
independence of.....VIII, 354
issue of public loan.....VII, 216
Jaworzina frontier.....VIII, 446
loan to Austria.....VIII, 451
Locarno settlement .....IX, 1–75
member —
conference of signatories to Protocol of Signature of Court.....IX, 627
European Health Conference.....VII, 204
Financial Committee on Austria...VII, 186
International Labor Organization VII, 138; VIII, 535
League of Nations.....VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 531
Second Opium Conference.....VIII, 192
minorities protection treaty.....VII, 237
payment for deliveries in kind.....VIII, 289
permanent delegate to League of Nations VIII, 620; IX, 156
Polish frontier dispute VII, 135–137; VIII, 353, 446
request for Hungarian reconstruction VIII, 455
signatory of —
Final Protocol of Locarno Conference IX, 24
Protocol for Pacific Settlement of International Disputes.....VII, 391
protocol of World Court.....IX, 567
treaty with Poland on conciliation commissions.....VIII, 412

Dabney, Charles W.....VII, 35
Dagnino, Mr.....VIII, 621
Daladier, Ed.....VIII, 169, 172
Dale, Henry Hallett.....VIII, 503
Daumas, Prince....VIII, 170, 172, 190, 191, 194
Damste, J. H. R. Sinninghe.....VII, 216

PAGE
Dandurand, Raoul....IX, 159
Dantas, L. M. de Souza....VIII, 276, 291
Danube Commission....VIII, 279, 531; IX, 285
Danzig, Free City of:
administration by League of Nations VII, 232–233; VIII, 577–579; IX, 329–333
advisory opinion of Permanent Court on postal service in port of....IX, 124–126
boundaries of "port of"....IX, 126
decisions of High Commissioner....IX, 577
debt payment on acquired territory..VIII, 293
disarmament of....VII, 232
finances....VII, 215; VIII, 513
member of European Health Conference VII, 204
member of Second Opium Conference VIII, 192
municipal loan....VIII, 415; IX, 283
Polish-Danzig agreement....VII, 233
Polish postal boxes....IX, 570
postal service in port of....IX, 124–126
properties ceded to....VIII, 290
Darby, W. Evans, "International Tribunals"....IX, 475
Dardel, G. de....VIII, 137
Darling, Dr. Samuel Taylor....VIII, 386, 504
Davignon, Jacques....VIII, 237
Davis, Maj. C. Claflin..VII, 19, 110; VIII, 389
Davis, Cushman K....IX, 506
Davis, Horace A....VII, 12, 110; VIII, 390
Davis, Norman H. VII, 12, 109, 184; VIII, 388, 444
Davis, Dr. William H....VIII, 386, 507
Dawes plan, see reparation.
"The Dawes Plan in Operation"..VIII, 221–326
Day, M. E....VII, 109; VIII, 388
Day, William Rufus....IX, 580
De Baranyai, Zoltàn....VIII, 194
Declaration of London....IX, 474
Declaration of Paris....IX, 461
Declaration recognizing the right to a flag of states having no seacoast, Apr. 20, 1921....VIII, 410
Deelman, Dr. H. D....VIII, 505
Delacroix, L'on....VIII, 239, 309
Delafosse, M....VIII, 493
Delaney, Marian....VII, 35
Delano, Frederic A....IX, 311
Delano, Georges....VIII, 531
Delaquis, E....VIII, 534
Delatour, M....IX, 274
Delbrück, M....VIII, 127, 130
Deleuze, Capt....VII, 146; VIII, 464
Delevingne, Sir Malcolm .VII, 195, 198; VIII, 80, 89, 105, 114, 156, 169, 172, 189, 191, 194, 553; IX, 306
Delta, Etienne....VIII, 460
Del Valle, Eleazar....IX, 417
Demilitarized zones....VII, 483, 490
Demolon, G....VII, 121; VIII, 402; IX, 167

PAGE
Denby, Charles....VIII, 135
Dendramis, Vassili VIII, 189, 191, 194, 620; IX, 625, 637
Denmark:
abolition of visas....VIII, 529
arbitration settlements....IX, 476
arbitration treaties —
Belgium, 1905....IX, 591
Brazil, 1911....IX, 592
Finland, 1924, 1926....IX, 597, 600
France, 1926....IX, 600
Germany, 1926....IX, 600
Great Britain, 1905....IX, 591
index of....IX, 587–607
Italy, 1905....IX, 591
Netherlands, 1904....IX, 590
Norway, 1908, 1924, 1926 IX, 591, 597, 599
Poland, 1926....IX, 600
Portugal, 1907....IX, 591
Russia, 1905....IX, 591
Siam, 1925....IX, 599
Spain, 1905....IX, 591
Sweden, 1924, 1926....IX, 597, 599
Switzerland, 1924....IX, 584, 597
United States, 1908, 1914 IX, 523, 591, 593
budget unit of League of Nations...VIII, 405
commission of inquiry —
treaty with United States, 1914....IX, 542
conciliation commissions —
treaty with Finland....VIII, 413
treaty with Norway....VIII, 413
treaty with Sweden....VIII, 413
treaty with Switzerland....VIII, 413
foreign policy....IX, 453
health service, international cooperation VII, 203
judicial settlement treaty with Sweden IX, 584
member —
conference of signatories of Protocol of Signature of Court....IX, 625
European Health Conference....VII, 204
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice....VIII, 581
Second Opium Conference....VIII, 192
opposition to treaty of guaranty for reparation....VIII, 226
optional clause of World Court signed IX, 567
declaration....IX, 641
permanent delegate to League VIII, 621; IX, 156
signatory of protocol of World Court ..IX, 567
Dennett, Tyler....VIII, 16
Dennis, Alfred Lewis P....VIII, 17
Dennis, G. P....VII, 121; VIII, 402; IX, 167
Dent, Sir Francis....VIII, 533

PAGE

Desart, Lord.....IX, 468
Descamps, Baron.....VII, 125; VIII, 580
Des Champs Chamier, Sir Edward Maynard.....IX, 626
Destrée, Jules..VII, 225; VIII, 536, 540, 542; IX, 295, 297
"The Development of the British Empire" by James Howard Robinson...VIII, 8
"The Development of Japan" by Kenneth Scott Latourette.....VIII, 9
Deventer, C. Th. van...VIII, 128, 130, 133, 135
Devinat, Paul.....VII, 144; VIII, 592
Dewey, John.....VII, 393
Diamandy, M.....VII, 102
Diaz, Porfirio.....IX, 339, 340, 341
Dickinson, Goldsworthy Lowes.....VIII, 31
Diena, Giulio.....VIII, 421; IX, 187, 188
Diggle, Comdr. N. W.....VII, 146
Dinichert, Paul.....IX, 627, 638
Dino, Dr. Djemil.....IX, 624; IX, 637
Diouritch, G.....VIII, 237
"The Direction of Human Evolution" by Edwin Grant Conklin.....VIII, 30
Disarmament:
  conference on.....VII, 392, 399, 409, 517
  defensive agreements.....VII, 482
  discussion by Elihu Root.....VII, 526–527
  Germany's view.....IX, 45
  naval.....VII, 412
  protocol of subcommittee of Fifth Assembly.....VII, 495–502
  regional agreements.....VII, 413
  Washington Conference.....VII, 519
Disarmament and security, draft treaty of American group.....VII, 488–494
  see also Arbitration, security and disarmament.
Dixon, Dr. G. C..VII, 121; VIII, 402; IX, 167
Dixon, G. Graham.....VIII, 19
Dmowski, Roman.....VII, 102
Dobkevicius, Gaëtan
  VII, 208; VIII, 524, 532, 533
Documents of the International Labour Conference.....VIII, 593
Dodge, H. Percival.....VII, 328
Dolbeare, Fred R.....VII, 19, 105; VIII, 383
Domestic jurisdiction of states....VII, 433–435
Dominican Republic:
  arbitration —
    constitution provides for.....IX, 459
    arbitration settlements.....IX, 476
    arbitration treaties —
      Brazil, 1910.....IX, 592
      Spain, 1902.....IX, 590
  budget unit of League of Nations...VIII, 405
  constitution.....IX, 581
  member —
    conference of signatories to Protocol of Signature of Court.....IX, 625
    International Labor Organization VIII, 535

PAGE

Dominican Republic — Continued.
    League of Nations.....VIII, 380; IX, 142
    Permanent Court of International Justice.....VIII, 531
    Second Opium Conference.....VIII, 192
  optional clause of World Court signed IX, 567
    declaration.....IX, 641
  signatory of protocol of World Court IX, 567
  treaty for advancement of peace, not in force.....IX, 545
"The Dominion of New Zealand" by Sir Arthur P. Douglas.....VIII, 8
"The Dominions and Dependencies of the Empire".....VIII, 8
Donau, W.....VIII, 593
Dorpat, treaty of.....VIII, 343
Dorset, Dr. Marion....VII, 23, 105; VIII, 383
Dorsey, H. W.....VIII, 387
Double taxation, see League of Nations, Economic and Financial Organization.
Douglas, Sir Arthur P.....VIII, 8
Douglas, Robert Kennaway.....VIII, 14
Douglas, Stephen A.....IX, 490
Doumergue, Paul.....VIII, 224
Drago, M.....IX, 468
Draudt, Lieut.-Col.....VIII, 566
Dreyfus, Silvain.....VII, 208; VIII, 524, 532
Drug addiction in United States.....VIII, 40
Drugs, see Opium.
Drummond, Sir James Eric
  VII, 120, 542; VIII, 401; IX, 166, 619
"The Dual Mandate in British Tropical Africa" by Sir Frederick John D. Lugard.....VIII, 30
Dubois, L.....VIII, 511, 514, 521
Duca, Jon S.....IX, 161
Dudfield, Dr. Reginald.....VIII, 508
Duffield, Thomas J.....VII, 10, 107; VIII, 386
Duggan, Dr. Stephen P.....VII, 483
Duke, Dr. H. L.....IX, 262
Dulles, Allen W.....VIII, 383
Dumesnil, Genl.....VII, 146; VIII, 464
Dunbabin, Thomas.....VIII, 8
Dundas, Lawrence J. L.....VIII, 13
Dupierreux, Richard.....IX, 297
Dupriez, L.....VIII, 467; IX, 234, 238
DuPuy, William A.....VII, 11, 110; VIII, 390
Dutch East Indies, bibliography.....VIII, 14
Duzmans, Charles.....IX, 626
Dvoracek, Jan....VII, 215, 218; VIII, 511, 521
Dyer, Dr. R. E..VII, 23, 107, 205; VIII, 386, 503
Dyke, Henry van.....VIII, 135, 136

East, Edward Murray.....VIII, 25
Eastern Carelia, advisory opinion of Permanent Court..VII, 131–132; VIII, 445
Eckhardt, H. von.....VIII, 189, 191, 194
Eckstrand, Erik Einar.....VII, 242; VIII, 573
Economic and Financial Organization, see League of Nations.

PAGE

"Economic Conditions in the Philippines" by H. H. Miller and C. H. Storms VIII, 12
Ecuador:
arbitration settlements ..... IX, 476
arbitration treaties —
Argentina, 1911 ..... IX, 592
Belgium, 1887 ..... IX, 588
Brazil, 1909 ..... IX, 592
Colombia, 1856, 1905 ..... IX, 587, 591
index of ..... IX, 587–607
Italy, 1911 ..... IX, 592
Salvador, 1890 ..... IX, 589
Spain, 1888 ..... IX, 589
Switzerland, 1888 ..... IX, 497, 589
United States, 1909, 1914 IX, 523, 591, 594
Venezuela, 1921 ..... IX, 596
commission of inquiry —
treaty with United States, 1914 .... IX, 542
member of International Labor Organization ..... VII, 105, 391, 585
nonmember of League of Nations VII, 138; VIII, 381; IX, 157
Eddy, George Sherwood ..... VIII, 23
Edwards, Agustín ..... VII, 112
Eginitis, D. ..... VII, 213; VIII, 535
Egypt:
arbitration settlements ..... IX, 476
conference on customs formalities ... VIII, 391
control of traffic in arms conference .. VIII, 391
member of Second Opium Conference VIII, 192
nonmember of League of Nations VIII, 381; IX, 157
opium, acceptance of inquiry proposal VIII, 110, 111
Eichel, Dr. Otto R. VII, 10, 107; VIII, 386; IX, 258
Einaudi, Prof. .... VII, 216; VIII, 514; IX, 278
Einstein, Albrecht ..... VIII, 536; IX, 531
Elbe river ..... VIII, 531
Electric power ..... VIII, 526
Elguera, M. ..... IX, 468
Eliot, Charles W. ..... VII, 318; VIII, 539
Elkus, Abram I. ..... VII, 108; VIII, 388, 426
Elliott, Charles Burke ..... VIII, 12
Elwood, R. ..... VII, 11, 109; VIII, 388
"Emigration and Immigration; Legislation and Treaties" ..... VIII, 25
Emigration Committee, International . VII, 20
Encisco, Julian ..... VIII, 620
Enckell, Carl ..... VII, 553; VIII, 619; IX, 641
Encyclopedia of Industrial Hygiene .. VIII, 593
Endemic disease ..... VII, 203
Epidemics .... VII, 22, 202–203; VIII, 501–502
Epidemiological Intelligence, bulletin of VII, 203
Epidemiological Reports ..... VII, 203
Equitable treatment of commerce ... VIII, 519
Erdehan ..... VII, 576

PAGE

Erich, Rafael ..... IX, 625, 637
Escalante, Diógenes ..... IX, 627, 638
"Essay on a Congress of Nations" by William Ladd ..... IX, 488
"An Essay on the Civilization of India, China and Japan" by Goldsworthy Lowes Dickinson ..... VIII, 31
Esthonia:
arbitration treaties —
Finland, 1925 ..... IX, 598
Germany, 1925 ..... IX, 598
index of ..... IX, 587–607
Latvia, 1923, 1925 ..... IX, 596, 598
Poland, 1925 ..... IX, 598
Sweden, 1925 ..... IX, 598
budget unit of League of Nations ... VIII, 405
conciliation commissions —
treaty with Poland on ..... VIII, 413
economic and financial crisis ..... VIII, 513
economic reform ..... IX, 281
frozen credits ..... IX, 283
member —
conference of signatories to Protocol of Signature of Court ..... IX, 625
European Health Conference ..... VII, 204
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice ..... VIII, 581
minorities protection treaty ..... VII, 240
optional clause of World Court signed IX, 567
declaration ..... IX, 641
rights to minorities guaranteed ..... VII, 240
signatory of Protocol for Pacific Settlement of International Disputes VII, 391
signatory of protocol of World Court .. IX, 567
"The Ethics of Opium" by Ellen N. La Motte ..... VIII, 19
Ethiopia, see Abyssinia.
Etienne, H. L. ..... VIII, 534
"Europe and the Far East" by Robert Kennaway Douglas ..... VIII, 14
Europe, Japanese residents in ..... VII, 253
European Anti-Epidemic Conference, expenses of ..... VII, 203–204
European Commission of the Danube VIII, 284; IX, 289
European Health Conference ..... VIII, 509
Eustathopoulos, M. ..... VIII, 490
Exchange of publications ..... VIII, 419
Extradition ..... IX, 187
Eysinga, W. J. M. van .. VII, 209, 213; VIII, 535

Fairchild, Henry Pratt ..... VIII, 390
"The Faith of Japan" by Tasuku Harada VIII, 32
Fall, Albert B. ..... IX, 538
Fallon, Bn. Alb. ..... VIII, 133, 135, 137

PAGE

Faunce, William H. P. . . . . VII, 39
Fauquet, G. . . . . VII, 144; VIII, 592
Faure, Col. . . . . VII, 146
Fayolle, Marshall. . . . . VII, 146, 148
Federal Council of Churches of Christ in America, memorial to U. S. Senate on Permanent Court. . . . . VII, 33, 91–92
Feis, Herbert. . . . . VII, 12, 111; VIII, 390
Ferenczi, Dr. I. . . . . VIII, 546
Fernandes, Raoul VII, 125; VIII, 580; IX, 160, 166
Fernandez y Medina, Benjamin VII, 209; VIII, 530, 534, 566; IX, 644
Ferreira, Antonio Maria Bartholomeu. . VII, 195; VIII, 128, 130, 133, 136, 169, 172, 190, 191, 194, 553; IX, 306
Ferrier, J. P. . . . . VII, 121
Fethi Bey. . . . . VII, 596; IX, 198
Figueras, J. . . . . VII, 215; VIII, 511
Filene, Edward A. . . . . VII, 35
"Filipino Appeal for Freedom". . . . . VIII, 20
Final act of the conference on opium, Feb. 11, 1925. . . . . VIII, 418
Final protocol of the International Opium Conference, 1912. . . . . VIII, 129–130
Final protocol of the Second International Opium Conference, 1913. . VIII, 131–133
Final protocol of the Third International Opium Conference, 1914. . VIII, 134–136
Financial Conference, Brussels International VII, 12, 214
Financial reconstruction:
  Austria. . . . . IX, 220–228
  Greek refugee settlement. . . . . IX, 230–231
  Hungary. . . . . IX, 228–230
  see also League of Nations.
Finger, Henry J. . . . . VIII, 127, 130
Finland:
  Aaland Islands dispute VII, 163–166; VIII, 425–428
  admission to League of Nations. . . . . VII, 240
  arbitration treaties —
    Denmark, 1924, 1926. . . . . IX, 597, 600
    Esthonia, 1925. . . . . IX, 598
    Germany, 1925. . . . . IX, 598
    index of. . . . . IX, 587–607
    Latvia, 1925. . . . . IX, 598
    Norway, 1924, 1926. . . . . IX, 597, 600
    Poland, 1925. . . . . IX, 598
    Sweden, 1924, 1926. . . . . IX, 597, 599
  budget unit of League of Nations. . . VIII, 405
  conciliation commissions —
    with Germany. . . . . VIII, 413
    with Norway. . . . . VIII, 413
    with Sweden. . . . . VIII, 413
  dispute with Russia over Eastern Carelia VII, 131–132; VIII, 343, 445
  health service, international cooperation VII, 203

PAGE

Finland — Continued.
  member —
    conference of signatories to Protocol of Signature of Court. . . . . IX, 625
    European Health Conference. . . . . VII, 204
    International Labor Organization VII, 138; VIII, 585
    League of Nations VII, 104; VIII, 330; IX, 142
    Permanent Court of International Justice. . . . . VIII, 581
    Second Opium Conference. . . . . VIII, 192
  minorities protection treaty. . . . . VII, 240
  optional clause of World Court signed IX, 567
    declaration. . . . . IX, 641
  permanent delegate to League VIII, 629; IX, 156
  signatory of protocol of World Court IX, 567
Finlay, Robert Bannatyne Viscount VII, 36, 127; VIII, 582
Finley, John H. . . . . VII, 39
First Universal Peace Congress. . . . . IX, 499
Fischer, Herr. . . . . VIII, 326
Fisher, Herbert A. L. . . . . VII, 174
Fitzpatrick, Sir Charles. . . . . IX, 468
Fitzsimons, Mr. . . . . IX, 483
Fleury, Georges. . . . . VII, 143; VIII, 592
Flexner, Dr. Abraham. . . . . VII, 19
Flux, A. W. . . . . IX, 274
Foch, Marshal. . . . . IX, 10
Focillon, Henri. . . . . IX, 293
Fonseca, Antonio da. . . . . VIII, 276, 291
Foote, Henry Stuart. . . . . IX, 488
Foraker, Joseph B. . . . . IX, 508
Forbes, W. Cameron. . . . . VII, 24
"Foreign Financial Control in China" by Theodore W. Overbach. . . . . VIII, 19
Foreign nationals, equitable treatment of VIII, 519
"The Foreign Policies of Soviet Russia" by Alfred Lewis P. Dennis. . . . . VIII, 17
Foreign Policy Association. . . . . VII, 13, 35, 317
Foreign Relations, Committee on:
  hearings on Permanent Court of International Justice. . . . . VII, 9
"The Foreign Relations of China" by Mingchien Joshua Bau. . . . . VIII, 15
"Foreign Rights and Interests in China" by W. W. Willoughby. . . . . VIII, 18
Formosa, opium, control of. . . . . VIII, 58
Fosdick, Raymond B. . . . . VII, 9, 109; VIII, 383
Foster, Sir George E. . . . . IX, 625, 637
"The Foundation of Japan" by J. W. Robertson Scott. . . . . VIII, 10
Foundation, Rockefeller. . . . . VII, 103
"Fourteen Points". . . . . VII, 101
France:
  acknowledgment of German aide-mémoire, Sept. 29, 1925. . . . . IX, 51

PAGE

France — Continued.
agreements —
distribution of Dawes annuities VIII, 276–291
Germany, Aug. 30, 1924....VIII, 257–261
partition of Turkey.....VII, 578
Turkish Nationalist Government..VII, 578
aide-mémoire from German ambassador, Sept. 26, 1925.....IX, 51
Anglo-American-French agreement IX, 11, 13
arbitration —
arrest and restitution of Savarkar...IX, 468
blockading powers preference.....IX, 468
Casablanca deserters.....IX, 468
claims against Peru.....IX, 469
dhows of Maskat.....IX, 468
perpetual leases in Japan.....IX, 468
petition of Chamber of Deputies....IX, 499
resolution of July 8, 1895, by Chamber.....IX, 500
seizure of the *Carthage*.....IX, 469
seizure of the *Manouba*.....IX, 469
seizure of religious goods in Portugal IX, 469
seizure of the *Tarignano*.....IX, 469
text of treaty with United States, Aug. 3, 1911.....IX, 526
Tunisian mabones *Kamouna* and *Gaulois*.....IX, 469
arbitration settlements.....IX, 476
arbitration treaties.....IX, 603
Argentina, 1914.....IX, 593
Brazil, 1909.....IX, 591
Czechoslovakia, 1924...IX, 29, 74–75, 597
Denmark, 1926.....IX, 600
Germany, 1925.....IX, 24, 38, 66, 599
Great Britain, 1903.....IX, 471, 590
index of.....IX, 587–607
Italy, 1903.....IX, 590
Netherlands, 1904.....IX, 590
Norway, 1904.....IX, 590
Poland, 1921, 1925.....IX, 29, 73–74
Siam, 1925.....IX, 598
Spain, 1904.....IX, 590
Sweden, 1904.....IX, 590
Switzerland, 1925.....IX, 598
United States, 1904, 1908, 1914 IX, 521, 523, 594
Uruguay, 1918.....IX, 595
army of occupation, cost of.....VIII, 278, 286
assets and liabilities, 1924.....VIII, 303
attitude on —
German arbitration treaties.....IX, 48
German entrance into League..IX, 18, 144
Protocol for Pacific Settlement..IX, 177
Briand consultation with Chamberlain on preparation for Locarno.....IX, 19
budget unit of League of Nations VIII, 405
claims under Art. 296 of treaty of Versailles.....IX, 579

PAGE

France — Continued.
commission of inquiry —
cannon shots fired at Tunisian mabones *Kamouna* and *Gaulois*....IX, 470
seizure of *Tarignano*.....IX, 470
treaty with United States, 1914....IX, 542
compulsory arbitration.....IX, 48
costs of army of occupation....VIII, 278, 286
customs régime in Saar.....IX, 327
Dawes plan in operation.....VIII, 221–326
defense of armament.....IX, 14
deliveries in kind.....VIII, 294
deposit of Locarno treaties.....IX, 184
dispute with Great Britain over nationality decrees in Tunis and Morocco VIII, 339
drug manufacturing power.....VIII, 67
Experts' plan, see Reparation.
Franco-Belgian notes, Sept. 10–15, 1920 IX, 12
German reply to note of Aug. 24, 1925 IX, 49
guaranties of security.....IX, 36
health service, international cooperation VII, 203
Herriot government.....VIII, 224
Indo-China, opium control in.....VIII, 60
interallied debts in relation to reparation VIII, 304
International Institute of Intellectual Cooperation.....VIII, 539
Inventaire de la situation financière VIII, 303
invitation to Germany to Locarno Conference.....IX, 50
Kwang-chow-wan, control of opium in VIII, 60
letter to Chancellor Marx, Aug. 16, 1924 VIII, 233
loans to Austria.....VIII, 451
Locarno Conference —
history of negotiations.....IX, 1–75
mandates for —
Cameroons.....VIII, 489
Syria and Lebanon.....VIII, 486
meeting of jurists, Sept. 1–4, 1924, before Locarno agreements.....IX, 20
member —
conference of signatories to Protocol of Signature of Court.....IX, 625
European Health Conference.....VII, 204
First Opium Conference.....VIII, 169
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Advisory Commission on Armaments.....VII, 146
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192

PAGE

France — Continued.
memorandum from Great Britain, May 19, 1925 ..... IX, 34
memorandum on application of Experts' plan ..... VIII, 227
memorandum to German ambassador, Feb. 20, 1925 ..... IX, 34
military forces in Ruhr ..... VIII, 285
Nationalist party ..... VIII, 225
nationality decrees in Morocco dispute VII, 58–59
negotiations for "security" ..... IX, 12–14
negotiations with United States, 1911 IX, 526
notes to —
Germany, June 16, 1925 ..... IX, 35
Germany, Aug. 24, 1925 ..... IX, 45
Great Britain on German negotiations, May 22, 1925 ..... IX, 34
obscene publications, conference for suppression of ..... VII, 223–224
occupation costs to Apr. 30, 1921 ... VIII, 268
opium —
auction system maintained ..... VIII, 51
certificate system in force ..... VIII, 51
control of use ..... VIII, 60
member of antismoking conference. VIII, 87
revenue from Indo-China ..... VIII, 63
suggestion to maintain convention of 1912 and protocols of 1924–25 .. VIII, 113
opposition to Herriot *rapprochement* VIII, 227
optional clause of World Court signed IX, 567
declaration ..... IX, 641
Pacific possessions, bibliography .... VIII, 14
passports ..... VIII, 528
payments to Reparation Commission VIII, 313
Poincaré government defeated ..... VIII, 224
problem of security ..... VII, 392–393
relations with Germany ..... IX, 18
reparation —
approval of Experts' plan ..... VIII, 224
army of occupation VIII, 298, 299, 300, 301
arrears on army costs ..... VIII, 289
attitude toward German external loan VIII, 321
estimated share ..... VIII, 303
expenses charged against payments VIII, 297
interviews at Chequers Court VIII, 225–227
Inventaire de la situation de la France VIII, 294
payments Nov. 11, 1918–Feb. 28, 1925 VIII, 295–296
percentage under Experts' plan ... VIII, 305
policy of Herriot ..... VIII, 224
removal of restrictions in occupied territories ..... VIII, 312
Reparation Recovery Act receipts VIII, 319, 320

PAGE

France — Continued.
Spa percentages ..... VIII, 282
suggestions on guaranties under Experts' plan ..... VIII, 226
reply of Germany to note of June 16, 1925 IX, 41
restitution of art objects ..... VIII, 281
Ruhr accounts —
cash receipts ..... VIII, 284, 285
deliveries in kind ..... VIII, 285
occupation ..... VIII, 224; IX, 13
Schedule of Payments ..... VIII, 304
security, problem of VII, 392–393; VIII, 227; IX, 11–14
share of Dawes annuities ..... VIII, 281
signatory of —
final protocol of Locarno Conference IX, 24
optional clause of Permanent Court VII, 394
Protocol for Pacific Settlement of International Disputes ..... VII, 391
protocol of London Conference VIII, 236–237
protocol of World Court ..... IX, 567
S.S. *Wimbledon* case decided by Permanent Court ..... VII, 127
treaty with United States on Togoland and the Cameroons ..... VII, 24
treaty with United States relating to mandate for Syria and the Lebanon VII, 24
troops landed in Anatolia ..... VII, 573
Tunis-Morocco nationality dispute VII, 130–131
Wadsworth agreement with United States on army costs VIII, 268, 270, 272, 274, 280
Franco, M. de Mello ..... IX, 324, 637
Franco Franco, Tulio ..... IX, 625
Frank, Glenn ..... VII, 554
Franklin, P. C ..... VIII, 534
Freedom of transit, see League of Nations, Organization for Communications and Transit.
Frelinghuysen, F. T ..... IX, 496
French Society of the Friends of Peace .. IX, 497
Frey, Col. Emile ..... IX, 496
Friends of the League ..... VIII, 549
Fromageot, Henri A. VIII, 421; IX, 625, 637
Fry, Sir Edward ..... IX, 468
Fuhs, R ..... VII, 143; VIII, 592
Fuller, Melville W ..... IX, 468
Furse, Dame Katherine .... VIII, 546; IX, 303
Furst, M ..... IX, 291
Furuseth, Andrew ..... VII, 11, 111; VIII, 390
Fusinato, M ..... IX, 468

Gadd, Maj. S. H ..... VII, 147; VIII, 464
Gailor, Bishop ..... VII, 7
Gallone, G ..... VII, 144; VIII, 592
Galloway, Sir David J., statement on use of opium ..... VIII, 44

PAGE
Galvanauskas, M. . . . . IX, 325, 642
Gamboa, F. . . . . VIII, 133
Gandhi, Mohondas . . . . . VIII, 44
Garay, M. . . . . IX, 160
Garbasso, M. . . . . VIII, 467; IX, 238
Garcia Benitez, Don Juan . . VII, 147; VIII, 464
Garcia de Pruneda, Lieut. Col. . . . . IX, 238
Garrison, William Lloyd . . . . . IX, 341
Gaulis, Mme . . . . . VIII, 549
Gases, asphyxiating . . . . . VII, 153
Gavit, John Palmer . . . . . VIII, 30
Gemmill, William . . . . . VIII, 590
General Federation of Women's Clubs . . . VII, 34
Geneva convention on Upper Silesia . . . VIII, 434
Geneva, declaration of . . . . . VIII, 548
Geneva protocol, see Protocol for Pacific Settlement of International Disputes.
Genoa Conference . . . . . VIII, 521
Gentlemen's Agreement:
criticisms of . . . . . VII, 292–294
legal aspects of . . . . . VII, 289
operation of the . . . . . VII, 291
relation to Immigration Act of February 5, 1917 . . . . . VII, 291
terms of the . . . . . VII, 288
Germanic Confederation . . . . . IX, 457, 458
Germany:
admission to League of Nations . . . . IX, 16–18
advisory opinion of Permanent Court on interests in Upper Silesia . . . . IX, 126–128
agreement on return to normal in occupied regions . . . . . VIII, 260
agreement with Allied Governments concerning agreement of Aug. 9, 1924 VIII, 250–257
agreement with Allied Governments, Aug. 30, 1924 . . . . . VIII, 257–261
aide-mémoire to British and French ministers, Sept. 26, 1925 . . . . . IX, 51
alliance with Turkey, Aug. 2, 1914 . . . VII, 569
Allied-German agreement, Aug. 30, 1924 VIII, 233
amnesty in occupied territories . . . . . VIII, 260
application of Art. 260 of treaty of Versailles . . . . . VIII, 293
arbitration —
blockading powers preference . . . . . IX, 468
Casablanca deserters . . . . . IX, 468
disputes between Allied merchants and authorities . . . . . VIII, 260–261
perpetual leases in Japan . . . . . IX, 468
procedure in case of default on reparation . . . . . VIII, 263
transfer of rights of German nationals VIII, 292
arbitration settlements . . . . . IX, 476
arbitration treaties —
Belgium, 1925 . . . IX, 24, 38, 43, 60–66, 599
Czechoslovakia, 1925 . . . . . IX, 24, 72, 599
Denmark, 1926 . . . . . IX, 600

PAGE
Germany — Continued.
Esthonia, 1925 . . . . . IX, 598
Finland, 1925 . . . . . IX, 598
France, 1925 . . . . . IX, 24, 66, 599
index of . . . . . IX, 587–607
Netherlands, 1926 . . . . . IX, 600
offer to conclude . . . . . IX, 40
Poland, 1925 . . . . . IX, 24, 66–71, 599
Soviet Union, 1926 . . . . . IX, 600
Sweden, 1924 . . . . . IX, 597
Switzerland, 1921 . . . . . IX, 19, 596
Art. 260 of treaty of Versailles . . . . . VIII, 292
Bad-Ems subcommittee, suppression of VIII, 260
Baden Bank of Karlsruhe . . . . . VIII, 325
Bavarian Bank of Issue of Munich . . VIII, 325
collective note from Locarno Conference regarding Art. 16 of the Covenant IX, 72–73
"Comments by German delegation on the Conditions of Peace" . . . . . IX, 10
commissions exercising right of investigation . . . . . IX, 244
commissions of inquiry —
loss of Dutch S.S. *Tubantia* . . . . . IX, 470
conciliation commissions —
negotiation for . . . . . IX, 584
with Finland . . . . . VIII, 413
with Sweden . . . . . VIII, 413
consumption of sugar . . . . . VIII, 240
Dawes plan in operation . . . . . VIII, 221–326
see also Reparation.
declaration of Chancellor von Bethmann-Hollweg, Aug. 4, 1914 . . . . . IX, 53
declaration of war by United States . . . VII, 572
declarations of Belgian Government, Sept. 26, 1925 . . . . . IX, 53
defraying of expenses of commissioners of controlled revenues . . . . . VIII, 249
demilitarized area . . IX, 6, 10, 25, 33, 36, 43
disarmament . . . . . IX, 19, 45, 51, 52, 53, 146
drug manufacturing power . . . . . VIII, 67
eastern border . . . . . IX, 29
evacuation of Cologne zone . . . . IX, 51, 52, 53
evacuation of Dortmund and Hörde VIII, 234
evacuation of occupied territory . . . . VIII, 234
execution of Arts. 264–267 of treaty of Versailles . . . . . VIII, 260
Experts' plan, see Reparation VIII
expulsion of residents in Rhineland by Allied Governments . . . . . VIII, 260
external loan for reparation . . . . VIII, 320–323
fiscal and economic unity . . . . . VIII, 258
Franco-Belgian announcement of evacuation of Ruhr . . . . . VIII, 234
French acknowledgment of aide-mémoire of Sept. 26, 1925 . . . . . IX, 51
French customs régime in Saar . . . . . IX, 327
frontiers with Belgium . . . . . IX, 25
frontiers with France . . . . . IX, 25

PAGE

Germany — Continued.
German-Allied commissions of arbitration VIII, 316
German railroad company organized VIII, 326
German settlers in Poland.....VII, 132–133
Germano-Polish convention.....IX, 317
imperial and state debt.....VIII, 293
initiative on Locarno treaties.....IX, 19
interests in Polish Upper Silesia.....IX, 569
invitation to Locarno Conference.....IX, 50
Kaiser Wilhelm's attitude on Bryan treaties.....IX, 545
Kiel Canal case.....VIII, 345
laws putting Experts' plan into effect VIII, 235
League of Nations—
application for membership.....IX, 143
Cabinet policy on admission to League IX, 18
communiqué of council of ministers IX, 143–144
entrance into League of Nations IX, 44, 52
formal application for admission to League of Nations.....IX, 154
memorandum on position....IX, 149–151
note of Dec. 12, 1924.....IX, 145–149
participation in activities.....VII, 111
letter of Chancellor Marx to French and Belgian delegations at London Conference.....VIII, 233–234
Locarno settlement.....IX, 1–75
see also Locarno Conference.
London conference on reparation VIII, 224–264
mandates, position on.....IX, 151
member of—
Advisory Committee on Communications and Transit....VII, 111; VIII, 391
Advisory Committee on Traffic in Opium.....VII, 111; VIII, 391
Committee on Intellectual Cooperation VII, 111; VIII, 391
European Health Conference....VII, 204
International Labor Organization VII, 111, 138; VIII, 391, 585
Second Opium Conference.....VIII, 192
Memel question.....VIII, 443
memorandum from France Feb. 20, 1925 IX, 34
memorandum of Feb. 9, 1925, to M. Herriot.....IX, 33
military occupation.....IX, 42
mixed arbitral tribunals.....IX, 579
mixed claims commission.....IX, 580
notes—
exchanged on Ruhr evacuation VIII, 233–235
from French Government, June 16, 1925.....IX, 35
Aug. 24, 1925.....IX, 45
to Allies on July 20, 1925.....IX, 41

PAGE

Germany — Continued.
obligations under Art. 16 of League Covenant.....IX, 44
occupation as guaranty of peace.....IX, 11
opium production.....VIII, 69
pacific settlement of Rhine questions IX, 25
plea for European disarmament.....IX, 148
principle of commissions of inquiry accepted.....IX, 545
prohibition on molestation in occupied territory.....VIII, 269
protest at abrogation of capitulations in Turkey.....VII, 569
public debt.....VIII, 221
question of sole responsibility for war...IX, 20
Reichsbank organization.....VIII, 325
Reichsmark currency.....VIII, 326
reinvestment of authority over occupied territories.....VIII, 258
relations of Experts' plan with ministry of finance.....VIII, 246
relations with Turkey in 1914.....VII, 570
remission of sentences and penalties in occupied territory.....VIII, 260
Rentenbank.....VIII, 326
reparation—
alcohol control.....VIII, 310
appointment of members of Board of Directors under Experts' plan..VIII, 309
arbitration of disputes VIII, 250–251, 254, 255, 256, 292
arbitration procedure.....VIII, 315–318
Bank and Railroad Company VIII, 325–326
Bank für deutsche Industrie-Obligationen.....VIII, 324
banking laws.....VIII, 325
banks of issue.....VIII, 325–326
beer tax.....VIII, 239, 243, 310
Belgian army of occupation VIII, 298, 299, 300, 301
British army of occupation VIII, 298, 299, 300, 301
budget burden.....VIII, 222
budgetary contributions.....VIII, 239
capital exports.....VIII, 227
coal consumption.....VIII, 241
Coblenz conference on operation of Experts' plan.....VIII, 259
committee for applying provisions of Experts' plan.....VIII, 254
fulfilment of undertakings.....VIII, 254
re-exportation of deliveries....VIII, 254
relation to Transfer Committee VIII, 254
compensation due European Commission of the Danube.....VIII, 284
contracts for loan.....VIII, 258
control over revenues from customs VIII, 239–240, 242, 243, 310
Dawes plan payments for five years VIII, 298–30

PAGE

Germany — Continued.
debt debits ..... VIII, 296
decision of arbitral decisions..... VIII, 252
declaration relative to Transfer Committee..... VIII, 251
deliveries in kind..... VIII, 295
Düsseldorf conference on operation of Experts' plan..... VIII, 259
European Commission of Danube VIII, 298
Experts' plan in operation... VIII, 221–326
external gold loan
VIII, 298, 299, 300, 301, 320–323
first test of plan..... VIII, 222
French and British arrears
VIII, 298, 299, 300, 301
French army of occupation
VIII, 298, 299, 300, 301
German railroad company
VIII, 224, 230, 258, 325, 326
index computed by "Statistische Reichsamt"..... VIII, 241
index of prosperity..... VIII, 240
Industrial Burden Law..... VIII, 314
industrial debentures..... VIII, 323–324
industry percentages..... VIII, 324
installation of controlling bodies under Experts' plan..... VIII, 258
Interallied Mission of Control for factories and mines..... VIII, 294
Interallied Rhineland High Commission..... VIII, 298, 299, 300, 301
law of Aug. 30, 1924..... VIII, 303
Law on Reich Railroad Company VIII, 314
laws necessary for carrying out Experts' plan..... VIII, 230
liability limited to terms of Experts' plan..... VIII, 269
loan for fulfilment..... VIII, 230
"Micum"..... VIII, 294
military commission of control
VIII, 298, 299, 300, 301
notice to finance committee, Nov. 14, 1924..... VIII, 318–319
operation of Experts' plan.. VIII, 306–326
payments Nov. 11, 1918–Feb. 28, 1925
VIII, 295–296
payments under Experts' plan VIII, 298–302
1st year, Sept. 1, 1924–Aug. 31, 1925
VIII, 298
2nd year, Sept. 1, 1925–Aug. 31, 1926
VIII, 299
3rd year, Sept. 1, 1926–Aug. 31, 1927
VIII, 300
4th year, Sept. 1, 1927–Aug. 31, 1928
VIII, 300
5th or standard year, Sept. 1, 1928–Aug. 31, 1929..... VIII, 301
population figure ..... VIII, 241
priorities under Experts' plan
VIII, 299, 300, 301, 302

PAGE

Germany — Continued.
procedure in case of default..... VIII, 263
program of London Conference
VIII, 227–230
promulgation of laws for Experts' plan
VIII, 259
railway bonds..... VIII, 230
railway system transferred..... VIII, 314
rates of assigned duties irreducible VIII, 249
Reichsbank..... VIII, 224
Reichsbank organization..... VIII, 325
removal of restrictions in Rhineland
VIII, 259
repatriation of German prisoners of war
VIII, 283
reservation as to rights and obligations
VIII, 291
revision of liabilities..... VIII, 242
revision of ordinances of Interallied Rhineland High Commission... VIII, 259
Special Accounting Committee for Pledges..... VIII, 294
statistical data for index of prosperity
VIII, 240
sugar control..... VIII, 310
sugar tax..... VIII, 239, 243
taxes on spirits..... VIII, 239, 243
tobacco tax..... VIII, 239, 243, 310
Reparation Commission —
agreement on operation of Experts' plan
VIII, 237–239
German Reich Railroad Company VIII, 309
noninterference with customs tariff policy..... VIII, 249
removal of vetoes on fiscal and economic legislation..... VIII, 258
secrecy of fiscal and trade facts by commissioners..... VIII, 249
reply of Aug. 27, 1925, to the French note of Aug. 24 ..... IX, 49
reply to Franco-Belgian note on Ruhr evacuation..... VIII, 234
reply to French note of June 16, 1925.. IX, 41
request for evacuation of Cologne area IX, 20
reservations on arbitral conventions.. IX, 47
responsibility for war. ..... IX, 52
restoration of properties in occupied territory..... VIII, 259
Rhineland —
agreement..... VIII, 258
demilitarization..... IX, 19
guaranty treaty..... IX, 25, 26
map showing bridgeheads..... IX, 5
memorandum ..... IX, 21
pact..... IX, 37
postwar tension in..... IX, 10–12
Ruhr —
date of occupation by Allied Governments ..... VIII, 234, 283; IX, 13
evacuation of..... VIII, 233–234

PAGE

Germany — Continued.
Saar Basin.....IX, 143
Saxon Bank of Dresden.....VIII, 325
schools in Near East.....VIII, 293
shares in Swiss Bank for Oriental Railroads.....VIII, 293
signatory of Locarno Conference documents.....IX, 24
signed protocol of London Conference VIII, 236–237
S.S. *Wimbledon* case decided by Permanent Court.....VII, 127
submission of disputes under Allied-German agreement of Aug. 30, 1924 VIII, 261
Transfer Committee —
commoditica.....VIII, 251
financial maneuvers.....255–256
products named.....VIII, 253
program laid down by Reparation Commission.....VIII, 251
program of deliveries.....VIII, 252
treaties of commerce and navigation VIII, 319
treaty of peace with United States, Aug. 25, 1921.....VIII, 268
adjustment of claims under.....VIII, 268
treaty with Great Britain, Dec. 2, 1924 VIII, 319
tribunals, mixed arbitral.....IX, 579
Upper Silesia —
plebiscite.....VII, 170–173; VIII, 432
social insurance funds.....IX, 217
transfers.....VIII, 293
value of gold mark for reparation payments.....VIII, 240
value of wealth transfers.....VIII, 292
voting of Reichstag on reparation laws VIII, 258
Württemberg Bank of Issue of Stuttgart VIII, 325
Ghent, treaty of.....IX, 481
Gianfranceschi, Rev. Father VII, 213; VIII, 535
Giardina, Giuseppe.....VIII, 505
Gibbons, Herbert Adams.....VIII, 15
Gibbs, Milo J.....VII, 11
Gibson, Hugh S.....VIII, 383
Gidel, Prof. Gilbert.....VIII, 362
Giga, Comdr.....VII, 146
Gihl, Dr. K. S. T.....VIII, 402; IX, 167
Gilbert, Seymour Parker, Jr.....VIII, 308, 321
Gilchrist, Huntington.....VII, 10, 109, 120; VIII, 388, 402; IX, 167
Gildersleeve, Virginia C.....VIII, 539
Giles, Herbert Allen.....VIII, 107
Girls Friendly Society in America.....VII, 34
Giustiniani, Princess Christina.....VII, 222
Gjoni, Marca.....VII, 174; VIII, 435
Glibert, M.....VIII, 507
Godet, Marcel.....VIII, 540

PAGE

Gohr, M.....VIII, 493
Golovin, N.....VIII, 34
Gompers, Samuel, statement on American entrance into Permanent Court of International Justice.....VII, 11, 93
González Roa, F.....IX, 348, 365
Good offices, definition of.....IX, 451
Gore, W. Ormsby.....IX, 238
Graciano, Margariteseo.....VII, 221
Gram, G. W. W.....IX, 468, 542
Granville, Dr. Alexander....VII, 202; VIII, 506
Gravina, Count.....IX, 470
Gray, George.....VII, 8; IX, 468
Gray, Louis H.....VII, 10
Graziani, Comdr.....VIII, 464
Great Britain:
Aaland Islands dispute submitted to Council of League of Nations...VII, 163
acknowledgment of German aide-mémoire of Sept. 26, 1925.....IX, 52
agreement —
regarding distribution of Dawes annuities.....VIII, 276–291
with China to extinguish opium export VIII, 48
with Germany Aug. 30, 1924 VIII, 257–261
with Germany suspending Reparation Recovery Act, Apr. 3, 1925....VIII, 320
aide-mémoire from German ambassador, Sept. 26, 1925.....IX, 51
Alabama claims —
question of neutral duties.....IX, 493
Anglo-American project, 1897.....IX, 497
Anglo-French arrangement of Sept. 18, 1897.....VIII, 342
arbitration —
arrest and restitution of Savarkar..IX, 468
blockading powers preference.....IX, 468
dhows of Maskat.....IX, 468
House of Commons resolution.....IX, 500
memorial of British House of Commons IX, 498
negotiations with United States....IX, 526
North Atlantic fisheries.....IX, 468
perpetual leases in Japan.....IX, 468
seizure of religious goods in Portugal IX, 469
arbitration settlements.....IX, 476
arbitration treaties —
Brazil, 1909, 1919.....IX, 592, 595
Chile, 1919.....IX, 595
Denmark, 1905.....IX, 591
France, 1903.....IX, 471, 590
Iceland, 1922.....IX, 596
index of.....IX, 587–607
Italy, 1904.....IX, 590
Netherlands, 1905.....IX, 591
Norway, 1904.....IX, 590
Portugal, 1904.....IX, 590
Siam, 1925.....IX, 599

PAGE

Great Britain — Continued.
Spain, 1904 ..... IX, 590
Sweden, 1904 ..... IX, 590
United States, 1908, 1914 ..... IX, 523, 594
Uruguay, 1918 ..... IX, 594
army of occupation, cost of .... VIII, 278, 286
budget unit of League of Nations .. VIII, 405
case brought by Greece before Permanent Court in re Mavrommatis Palestine concessions ..... VIII, 356
claims under Art. 296 of treaty of Versailles ..... IX, 579
Colonial Conference, 1897 ..... VII, 332
commission of inquiry —
North Sea incident ..... IX, 470
treaty with United States, 1914 .. IX, 542
use of opium ..... VIII, 40–41
cooperation with Herriot government VIII, 224–227
Dawes plan in operation ..... VIII, 221–326
see also Reparation.
declaration at Second Conference .. VIII, 94
dispute with France over nationality decrees in Morocco VII, 58–59; VIII, 339
drug manufacturing power ..... VIII, 67
evacuation of Cologne sector of Germany VIII, 234
Experts' plan, see Reparation VIII
French "security" negotiations ... IX, 12–14
frontier dispute between Turkey and Iraq ..... IX, 128–130, 191, 570
health service, international cooperation VII, 203
immigration —
Act of 1901 ..... VII, 332
dictation test for exclusion of Japanese VII, 332
"domestic questions" ..... VII, 326
Imperial War Conference ..... VII, 333
India Government, attitude on opium VIII, 64
Indian immigration ..... VII, 333
Indo-Chinese opium export ..... VIII, 48
interallied debts, solution of ..... VIII, 229
invitation to Germany to Locarno Conference ..... IX, 50
Iraq —
frontier .. VIII, 449–450; IX, 128–130, 191
resolution of Council of League of Sept. 27, 1924 ..... VIII, 487
treaty with ..... VIII, 487
Jay treaty of 1794 ..... IX, 479
arbitrations under ..... IX, 481–484
commissions under ..... IX, 482
convention annulling Art. VI .... IX, 484
legality of Ruhr occupation denied VIII, 235
loan to Austria ..... VIII, 451
Locarno Conference —
history of negotiations ..... IX, 1–75

PAGE

Great Britain — Continued.
London Conference —
position on Ruhr occupation ..... VIII, 235
representation at ..... VIII, 232
see also Reparation.
mandates for —
Cameroons ..... VIII, 489
Mesopotamia (Iraq) ..... VIII, 486
Nauru ..... VIII, 489
Palestine ..... VIII, 486
Tanganyika ..... VIII, 489
Togoland ..... VIII, 489
Transjordania ..... VIII, 486
Mavrommatis Jerusalem concessions VIII, 371–374, 583
Mavrommatis Palestine concessions VIII, 356–360, 583
member of —
conference of signatories to Protocol of Signature of Court ..... IX, 625
conference on suppression of opium smoking ..... VIII, 87
European Health Conference ..... VII, 204
International Labor Organization VII, 138, VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Opium, Advisory Committee on Traffic in ..... VII, 195
Permanent Advisory Commission on Armaments ..... VII, 146
memorandum on application of Experts' plan ..... VIII, 227
memorandum to French ambassador, May 19, 1925 ..... IX, 34
occupation costs to Apr. 30, 1921 .... VIII, 268
opium —
Cecil proposal ..... VIII, 96
commission on traffic, 1909 ..... VIII, 60
control in British Burma ..... VIII, 58
Hongkong revenue ..... VIII, 63
Malaya Opium Committee report VIII, 62–63, 66
production ..... VIII, 69
proposal on medicinal use ..... VIII, 80
rationing system ..... VIII, 66
report of 1923 committee on British Malaya ..... VIII, 65–66
revenue from British Malaya ..... VIII, 63
system of control ..... VIII, 60–61
traffic in the Straits Settlements VIII, 60–61, 62
pacific settlement of disputes declaration on ..... IX, 15
peace movement begins ..... IX, 459
problem of general security ..... VIII, 229
racial equality in the Empire ..... VII, 332
reparation —
army of occupation costs VIII, 298, 299, 300, 301

PAGE

Great Britain — Continued.
arrears on army costs.....VIII, 289
attitude toward American claims VIII, 272, 273
Spa percentages.....VIII, 282
Reparation Recovery Act —
receipts.....VIII, 319, 320
suspension of.....VIII, 320
see also Reparation
Royal Commission for investigation of opium problem in India.....VIII, 43
St. Croix river boundary of Canada...IX, 481
share of Dawes annuities.....VIII, 281
signatory of Locarno Conference documents.....IX, 24
signatory of protocol of London Conference.....VIII, 236–237
speech of Sir Edward Grey on arbitration IX, 524
S.S. *Wimbledon* case decided by Permanent Court.....VII, 127–129
treaty of December 13, 1921, relating to insular possessions in Pacific....VII, 325
treaty on nonfortification and neutralization of Aaland Islands.....VII, 166
treaty relations with Siam.....VIII, 59
Tunis-Morocco nationality decree dispute.....VII, 130–131
United States rejects general arbitration, 1897.....IX, 508
use of British navy in sanctions under Covenant.....VII, 394
Wadsworth agreement with United States on army costs.....VIII, 268, 270
Greco-Bulgarian emigration commission VII, 241–242; VIII, 572–574
Greco-Turkish emigration commission VIII, 572–574
Greece:
agreement regarding the distribution of Dawes annuities.....VIII, 276–291
agreement with Germany Aug. 30, 1924 VIII, 257–261
Albanian boundary dispute VII, 173–175; VIII, 434
appeal to League of Nations in *re* Italian occupation of Corfu.....VII, 177
arbitration settlements.....IX, 476
arbitration treaties —
Belgium, 1905.....IX, 591
index of.....IX, 587–607
Serb-Croat-Slovene State.....IX, 600
Spain, 1909.....IX, 592
Switzerland, 1925.....IX, 599
arguments before Council in dispute with Bulgaria.....IX, 206
budget unit of League of Nations...VIII, 405
Bulgarian emigration.....VII, 241
case against Great Britain in *re* Mavrommatis Palestine concessions....VIII, 356

PAGE

Greece — Continued.
claims under Art. 296 of treaty of Versailles.....IX, 579
Corfu incident.....VIII, 438–442
defeat of armies in Anatolia.....VII, 579
dispute with Bulgaria.....IX, 201–217
dispute with Italy.....VII, 177–181
epidemics.....VIII, 502
exchange of populations with Turkey VII, 589; VIII, 366
expulsion of Œcumenical Patriarch IX, 190–191
Greco-Bulgarian emigration commission VIII, 572–574
Greco-Turkish emigration commission VIII, 572–574
Greek Orthodox Church.....VIII, 457
health service, international cooperation VII, 203
incursions of Bulgarian bands..VIII, 436–437
indemnity paid to Bulgaria.....IX, 211
Italian demands.....VIII, 438
landing of troops at Smyrna.....VII, 574
malaria.....VIII, 504
Mavrommatis Jerusalem and Palestine concessions.....VIII, 356–360, 371–374
member of —
conference of signatories to Protocol of Signature of Court.....IX, 625
European Health Conference.....VII, 204
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
minorities in Bulgaria.....IX, 317
minorities in Constantinople.....IX, 319
mixed commission on emigration of Bulgarians.....VII, 241–242
Moslems of Albanian origin in.....VIII, 447
Mudania armistice, October 11, 1922 VII, 579
note to Bulgaria on incursions of armed bands.....VII, 175
opium —
production.....VIII, 47, 109, 110
proposal to prevent export of raw opium.....VIII, 111
reservations on production limitation VIII, 113
permanent delegate to League of Nations VIII, 620; IX, 156
protocol relating to settlement of refugees VIII, 413
protocols on minorities.....IX, 318
refugee settlement —
Greek loan.....IX, 231
land for colonization.....IX, 231
loan under League auspices VII, 19, 105, 119; IX, 230

PAGE

Greece — Continued.
Settlement Commission VIII, 457; IX, 230
refusal of Permanent Court on reparations interpretation ..... VIII, 371
relinquishment of claims by Turkey VII, 587
reparation —
nonmember of Commission... VIII, 307, 309
percentage under Experts' plan VIII, 282, 304–305
signatory of —
Protocol for Pacific Settlement of International Disputes ..... VII, 391
protocol of London Conference VIII, 236–237
protocol of World Court ..... IX, 567
treaty with United States for advancement of peace, not in force ..... IX, 545
Green, John Raeburn.... VII, 10, 109; VIII, 388
Greenbie, Sydney ..... VIII, 7, 10
Greenwood, Ernest..... VII, 11, 111, VIII, 390
Greenwood, Dr. Major ..... VIII, 505, 508
Grenville, Lord ..... IX, 480, 488
Gresham, Walter ..... IX, 500
Grew, Joseph C.... VII, 14, 105, 582; VIII, 388
Grey, Sir Edward ..... IX, 524
Griffis, William Elliot ..... VIII, 12
Grimshaw, H. A... VII, 143; VIII, 491, 493, 592
Grotius, development of international law from ..... VII, 55
Grünenwald, Herr ..... VIII, 127, 130
Guani, Alberto
VII, 553; VIII, 467, 619; IX, 200, 217, 238
Guatemala:
arbitration settlements ..... IX, 476
arbitration treaties —
Costa Rica, 1895, 1923 ..... IX, 589, 596
Honduras, 1895, 1923, 1926... IX, 589, 596
index of ..... IX, 587–607
Italy, 1913 ..... IX, 593
Nicaragua, 1874, 1923 ..... IX, 588, 596
Salvador, 1890, 1923 ..... IX, 589, 596
Spain, 1902 ..... IX, 590
United States, 1913, 1923..... IX, 593, 596
Asiatic immigration prohibited..... VII, 332
budget unit of League of Nations... VIII, 405
Central American Court of Justice.... IX, 546
commission of inquiry —
treaty with United States, 1913.... IX, 542
member of International Labor Organization ..... VII, 138; VIII, 585
member of League of Nations VII, 104; VIII, 380; IX, 142
San José conference ..... IX, 546
text of treaty for advancement of peace IX, 536
Guerreau, M ..... VIII, 592
Guerrero, Dr. J. Gustavo ..... VII, 208; VIII, 422, 524; IX, 160, 187, 643
Gulick, Sidney L..... VII, 91–92; VIII, 27, 390
Gullon Yglesias, Pio de ..... IX, 544
Gunn, S. M ..... VII, 21, 107; VIII, 386
Guthrie, William D ..... VII, 35

PAGE

Hackett, Charles Wilson, "The Mexican Revolution and the United States, 1910–1926" ..... IX, 339–446
Hagberg-Wright, C. T ..... VIII, 540
Hagerup, Francis..... VII, 125; VIII, 137, 531
Hägg, E ..... VIII, 531
Hague, Conference, First:
armament, decrease of ..... IX, 464
program ..... IX, 464
Russian plan for arbitration tribunal.. IX, 465
Hague Conference, Second:
calling of ..... IX, 471
recovery of contract debts ..... IX, 471
Hague convention of 1899 ..... IX, 517
Hague convention, 1907 ..... VII, 459–479
Hague Peace Tribunal ..... VII, 48
Haiti:
arbitration settlements ..... IX, 476
arbitration treaties —
index of ..... IX, 587–607
Brazil, 1910 ..... IX, 592
United States, 1909 ..... IX, 523, 591
budget unit of League of Nations... VIII, 405
member —
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice ..... VIII, 581; IX, 567
optional clause of World Court signed IX, 567
declaration ..... IX, 642
Haking, General ..... IX, 124, 125
Hale, George Ellery.. VII, 16, 108; VIII, 387, 538
Hale, William B ..... VII, 36
Halecki, Otto de ..... IX, 297
Halifax, Capt. G ..... VIII, 464
Hamilton, Dr. Alice..... VII, 21, 23, 107, 202; VIII, 386, 497
Hamlin, Hannibal ..... IX, 495
Hammarskjöld, Åke..... VII, 127; IX, 186, 468
Hammarskjöld, Knut Hjalmar Leonard VIII, 421; IX, 542
Hampton, Brock C ..... VIII, 386
Handbook of International Organizations VIII, 561
"A Handbook of the Philippines" by Hamilton Mercer Wright ..... VIII, 12
"Handbook on the League of Nations, 1920–1924" ..... VII, 97–272
"Handbooks of the British Foreign Office" VIII, 14
Hanihara, Masanao:
note of April 17, 1924, to Secretary of State Hughes ..... VII, 364–365
note of May 31, 1924, protesting at discrimination against Japanese in American exclusion act.. . VII, 372–375
note respecting "gentlemen's agreement" VII, 358–362

PAGE
Hankey, M. P. A.....VIII, 237
Hankins, Frank H.....VIII, 28
Hanosek, Dr.....IX, 274
Hanotaux, Gabriel.....VIII, 452; IX, 544
Hansen, Fredrik Wilhelm.....VIII, 533
Hansen, Dr. H. J.....VIII, 508
Harada, Tasuku.....VIII, 32
Harbord, Genl. James G.....VII, 488
Harding, W. P. G.....VII, 13, 107; VIII, 385
Harding, Warren G., see President of the United States.
Harmon, Judson.....IX, 542
Harris, S. W..VII, 221, 222; VIII, 545; IX, 303
Haskell, Lewis W.....VII, 15, 105; VIII, 383
Haskins, Charles Homer.....VIII, 538
Hawaii:
bibliography.....VIII, 13
Japanese immigration.....VII, 344
Japanese population in.....VII, 286
Japanese residents in.....VII, 283
population of.....VII, 236
"Hawaii, the Rainbow Land" by Katherine Pope.....VIII, 13
"Hawaii's Bill of Rights".....VIII, 13
Hay, John.....VII, 303; IX, 451, 466, 516
Hayashi, Viscount.....VII, 146, 328
Hayden, Ralston.....VIII, 21
Health Conference, European.....VII, 204–205
Health Conference, International.....VII, 20
Health Organization, see League of Nations.
Health supervision of traffic over navigable waterways.....VIII, 419
"Hearings on the Permanent Court of International Justice".....VII, 33–93
Hearn, Lafcadio.....VIII, 9
Hedrén, G.....VIII, 508
Heer, Henri.....VII, 215; VIII, 511
Hein, Dr. Estrid...VII, 221; VIII, 545; IX, 303
Hejaz....VII, 138; VIII, 381, 382, 585; IX, 157
Hekime, Abur Hassan.....VIII, 621
Hellner, Joannes.....IX, 544
Henderson, Arthur.....VII, 393
Hennequin, M.....VII, 222; VIII, 547
Hennings, Einar.....IX, 644
Herante Abro Bey.....IX, 468
Heroin:
definition of.....VIII, 147
manufacture and use.....VIII, 115, 117
manufacture prohibited in United States VIII, 39
resolution of League of Nations Advisory Committee on abolition.....VIII, 40
suppression of manufacture.....VIII, 156
use of.....VIII, 39
Herold, Dr. Robert.....VII, 209; VIII, 533
Herrick, Myron T.....VIII, 276, 291
Herring, Charles E.....VIII, 383
Herriot, Edouard:
attitude toward Germany.....VIII, 227

PAGE
Herriot, Edouard — Continued.
conversations with Premier MacDonald VII, 393; VIII, 225–227
interallied debts.....VIII, 225
letter to Chancellor Marx at London Conference.....VIII, 233
London Conference, part in.....IX, 575
memorandum from German Ambassador, Feb. 9, 1925.....IX, 33
security, question of..VII, 414; VIII, 225, 481
Hersbey, Susanne W.....VIII, 10
Hertz, Dr. J. H.....IX, 291
Hess, Col. R. H.....VII, 12, 105; VIII, 382
Hevesy, P. de.....IX, 625, 637
Hibben, John Grier.....VII, 36
Hidalgo, Miguel.....IX, 440
Hill, Sir Claude.....VIII, 566
Hills, Maj. J. W.....VII, 143
Hindley, Charles.....IX, 460
Hines, Walker D.:
Danube and Rhine navigation VIII, 384, 532; IX, 285
statement on Permanent Court.....VII, 81
Hirsch, Gilbert.....VII, 15, 105; VIII, 383
Hischemöller, Cbr.....VIII, 133
"History and Digest of International Arbitrations . . ." by John Bassett Moore.....IX, 475
"History of Religions" by George Foot Moore.....VIII, 32
Hocking, M. E.....VIII, 402; IX, 167
Hodáč, Francis VII, 148; VIII, 467, 590; IX, 238
Hodge, Comdr. John McKey.....VIII, 402
Hodgkin, Henry Theodore.....VIII, 11
Hoernell, M.....VII, 183–184; VIII, 444
Hoesch, Herr von.....IX, 33, 34, 35
Hoffmann, Joseph.....IX, 171
Hogg, Sir Douglas VII, 326; VIII, 341, 371; IX, 129
Holck-Colding, P. A.....VIII, 533
Holderness, Sir Thomas W.....VIII, 13
Holland, Dr. Eardley L.....VIII, 508
Holls, Frederick W.....IX, 466
Holmes, Samuel Jackson.....VIII, 29
Holsti, M.....VII, 148
Holt, Hamilton.....VII, 554
Holy Synod.....IX, 191
Honduras:
arbitration settlements.....IX, 476
arbitration treaties —
Argentina, 1923.....IX, 596
Brazil, 1909, 1923.....IX, 591, 596
Chile, 1923.....IX, 596
Colombia, 1923.....IX, 596
Costa Rica, 1895, 1923.....IX, 589, 596
Cuba, 1923.....IX, 596
Dominican Republic, 1923.....IX, 596
Ecuador, 1923.....IX, 596
Guatemala, 1895, 1923.....IX, 539, 596
Haiti, 1923.....IX, 596

PAGE

Honduras — Continued.
index of ..... IX, 587–607
Italy, 1913 ..... IX, 593
Mexico, 1908 ..... IX, 591
Nicaragua, 1923 ..... IX, 596
Panama, 1923 ..... IX, 596
Paraguay, 1923 ..... IX, 596
Salvador, 1923 ..... IX, 596
Spain, 1894, 1905 ..... IX, 589, 591
United States, 1913, 1923 ..... IX, 593, 596
Uruguay, 1923 ..... IX, 596
Venezuela, 1923 ..... IX, 596
budget unit of League of Nations ... VIII, 405
Central American Court of Justice .... IX, 546
commission of inquiry —
treaty with United States, 1913 .... IX, 543
exiles in Nicaragua ..... IX, 547
Gulf of Fonseca condominium ..... IX, 548
member of International Labor Organization ..... VII, 138; VIII, 585
member of League of Nations
VII, 104; VIII, 380; IX, 142
Hoot-Tsi, Prof. ..... IX, 296
Hornbeck, Stanley K. ..... VIII, 14
Horst, H. J. ..... IX, 542
Horta, Victor ..... IX, 171
Hostie, M ..... IX, 331
House, Edward M., member of organizing committee of League of Nations
VII, 8, 102; IX, 545
House of Bishops of the Protestant Episcopal Church ..... VII, 35
Howland, Charles P. ... VIII, 389, 460; IX, 230
Huber, Hans Max ..... VII, 87, 127, 164; VIII, 347, 426, 508, 542; IX, 468, 544
Hudson, Manley O. VII, 10, 11, 16, 36, 109, 224
"American Co-operation with the League of Nations" ..... VII, 1–26
statement on Permanent Court before Committee on Foreign Relations VII, 83–88
"What the Protocol Does" .... VII, 391–400
"The Work of the Permanent Court of International Justice during Four Years" ..... IX, 77–130
"The Work of the Permanent Court of International Justice during its First Three Years" ..... VIII, 329–374
Huerta, Señor De la ..... IX, 351
Huerta, Victoriano ..... IX, 343, 486
claims convention, general, with Mexico
IX, 431, 435
Hanihara note respecting "gentlemen's agreement" ..... VII, 358–362
letter on German claims ..... VIII, 269
letter on optional clause of Permanent Court of International Justice .. IX, 479
letter to Senator Colt on Japanese exclusion act ..... VII, 357
Mexican policy ..... IX, 352

PAGE

Huerta, Victoriano — Continued.
note of April 18, 1924, to Japan on immigration ..... VII, 365–366
property rights in Mexico ..... IX, 361
protest on Japanese exclusion act
VII, 305, 353–356
reply of May 31, 1924, to Japanese protest on exclusion act ..... VII, 376–380
reply to note of April 10, 1924 ..... VII, 362
statement on American treaty of Lausanne
VII, 596
statement on relation of Permanent Court to League of Nations ..... VII, 89–90
Hull, William I., statement on Permanent Court before Committee on Foreign Relations ..... VII, 34, 77–81
"The Human Side of Hawaii" by Albert W. Palmer ..... VIII, 13
Humbert, Dr. ..... VIII, 545; IX, 303
Hunees, Jorje ..... VIII, 133
Hungary:
admission to League of Nations ..... IX, 17
arbitration treaties —
Austria, 1923 ..... IX, 596
Switzerland, 1924 ..... IX, 597
budget, balance of ..... VII, 189
budget unit of League of Nations ... VIII, 405
ceded territories ..... VIII, 292
commission with right of investigation IX, 244
commissioner-general ..... VIII, 457
conciliation commission with Switzerland
VIII, 413
dispute over Czechoslovakian boundary
VII, 176; VIII, 438
dispute with Serb-Croat-Slovene State
VII, 176; VIII, 438
farmers in Rumania ..... IX, 320
financial reconstruction —
auspices of League ... VII, 188–191; VIII, 455–457, 513; IX, 228–230
bank of issue ..... IX, 228
currency reform ..... IX, 230
duties of commissioner-general .... IX, 228
external loan .. VII, 189; VIII, 457; IX, 230
protocols on ..... VII, 191; VIII, 414, 457
scheme of ..... VIII, 455–456
frontier dispute with Austria
VII, 176; VIII, 437
health service, international cooperation
VII, 203
Jewish minority in ..... IX, 325
member of —
conference of signatories to Protocol of Signature of Court ..... IX, 625
European Health Conference ..... VII, 204
International Labor Organization
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 380; IX, 142

PAGE

Hungary — Continued.
Permanent Court of International Justice.....VII, 126; VIII, 581
Second Opium Conference.....VIII, 192
minorities protection treaty.....VII, 237
permanent delegate to League VIII, 620; IX, 156
property rights in Rumania VII, 181–182; VIII, 443
reparation —
Belgian rights.....VIII, 282
resolution of Reparation Commission regarding reconstruction.....VII, 189
signatory of protocol of World Court..IX, 567
stabilization of crown.....VII, 189; VIII, 455
Hunger, J. D.....VII, 175; VIII, 436
Huntington, Ellsworth.....VIII, 29
Hurst, Sir Cecil James B. VIII, 356; IX, 129, 625, 637
Husband, Walter W.....VII, 106; VIII, 390
Huston, Howard R....VII, 10, 109, 121; VIII, 388, 402; IX, 167
Hutchins, Harry B.....IX, 544
Hutchins, Mrs. Martin.....VII, 35
Hydraulic power.....VIII, 526
Hydrographic Bureau, International VII, 14, 106
Hygienic Laboratory, U. S. Public Health Service.....VII, 205
Hymans, Paul ...VII, 102, 112; VIII, 233, 429; IX, 211, 273, 640
Hyndman, Henry Mayers.....VIII, 15

Iceland:
application of opium convention, 1925 VIII, 382
arbitration treaty with Great Britain, 1922.....IX, 596
Identity certificates for Armenian refugees VIII, 415
Idman, M.....IX, 160
Ifni, declaration on.....IX, 237
Ikeda, Lieut. J.....VIII, 464
Ilbert, Sir Courtenay P.....VIII, 22
Illinois Alien Act of 1897.....IX, 380
Illinois Federation of Women's Clubs..VII, 35
Immigration exclusion act from United States, 1924.....VII, 367–370
"The Immigration Problem" by Jeremiah Whipple Jenks and W. Jett Lauck VIII, 25
Imperiali, Marquis.....VII, 186; VIII, 452
"Imperialism and World Politics" by Parker Thomas Moon.....VIII, 18
Imperialism, bibliography.....VIII, 18
Index Bibliographicus.....VII, 228; VIII, 540
India:
agreement with Germany, Aug. 30, 1924 VIII, 257–261
arbitration treaties.....IX, 604
attitude at Opium Conferences of 1924–25.....VIII, 45

PAGE

India — Continued.
bibliography.....VIII, 13, 21
budget unit of League of Nations...VIII, 405
cultivation of poppy.....VIII, 139
Government of India Act of 1919, control of opium.....VIII, 45
Liberal Federation of.....VIII, 44
member of —
Advisory Committee on Traffic in Opium.....VII, 195
conference of signatories to Protocol of Signature of Court.....IX, 625
First Opium Conference.....VIII, 169
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581; IX, 567
Second Opium Conference.....VIII, 192
opium —
agreements on exportation.....VIII, 51
auction system.....VIII, 51
consumption.....VIII, 50
control by license.....VIII, 50
cooperation on limitation.....VIII, 82
debate on "medicinal & scientific" VIII, 78
domestic uses of.....VIII, 44
"excise" consumed at home.....VIII, 50
exemption of production for domestic uses.....VIII, 83
export to China.....VIII, 51
exports to colonial governments..VIII, 52
licensed shops.....VIII, 50
Malwa.....VIII, 51
medicinal use of opium.....VIII, 105
member of antismoking conference VIII, 87
methods of control.....VIII, 50
opposition to American proposals..VIII, 103
opposition to anti-opium propaganda VIII, 91
policy with Governments on importation.....VIII, 51
position at conferences.....VIII, 104
price.....VIII, 51
production for eating VIII, 44–45, 47, 50, 52, 82
proposal to prevent export of raw opium VIII, 111
"provision" for export.....VIII, 50
smuggling.....VIII, 51
usage for domestic purposes.....VIII, 104
use of, medicinally.....VIII, 40, 42
reservation on resolution of Advisory Committee on Opium.....VIII, 154–155
resolution of 5th sess. Advisory Committee on uses of raw opium...VIII, 81
signed protocol of London Conference VIII, 236–237

PAGE

India — Continued.
stoppage of opium export to China, 1913 VIII, 48
"India, a Bird's Eye View" by Lawrence J. L. Dundas.....VIII, 13
"India in 1922–1923 passim" by Laurence Frederic Rushbrook Williams..VIII, 13
"India, Old and New" by Sir Valentine Chirol.....VIII, 22
Indian hemp.....VIII, 179
Indian National Congress, resolution on opium policy.....VIII, 43–44
Indian National Social Conference....VIII, 44
"An Indiscreet Chronicle from the Pacific" by B. L. Putnam Weale.....VIII, 15
Indo-China, opium control in.....VIII, 60
Industrial and Labour Information VII, 144; VIII, 593
Industrial property conventions, 1883, 1900, 1911 .....IX, 267
Ingianni, Giulio.....VIII, 530
Inquiry, international commissions of...VII, 461
Institut ibérique de droit comparé VIII, 423; IX, 189
Institute of International Education VII, 108; VIII, 387
Institute of International Law VIII, 423; IX, 189, 463
Institute of Pacific Relations, bibliography VIII, 1–34
Intellectual Cooperation, see League of Nations.
Interallied Rhineland High Commission VIII, 259, 277
Inter-American High Commission....VIII, 520
International agreement, development of VIII, 407–423; IX, 173
International American Conference IX, 463, 517
International Anti-Opium Association:
statement on extinction of opium production in China.....VIII, 49
International Arbitration and Peace League IX, 524
International Association for the Promotion of Child Welfare.....VII, 245, 246; VIII, 547, 563
International Astronomical Union.....VII, 213
International Bibliographical Institute, Brussels .....VII, 228
International Bureaus.....VIII, 561
International Central American Tribunal IX, 551
International Chamber of Commerce VII, 211, 213; VIII, 535
International circulation of motor vehicles VIII, 419
International Commission for Air Navigation .....VII, 246; VIII, 563
International Commissions of the Danube, Elbe and Oder .....IX, 289

PAGE

International Committee of Bankers...IX, 375
International Committee on Agriculture VII, 246; VIII, 565
International Conference for the Suppression of the Circulation of and Traffic in Obscene publications...VIII, 413, 550
International conference on sleeping sickness VIII, 419
International Conference on White Slave Traffic, 1921.....VIII, 544
International convention relating to the simplification of customs formalities VIII, 414
International Cooperation in Statistics VIII, 510
International Council of Women.....IX, 302
International engagements in force VIII, 408–415
International Federation of Christian Trades Unions .....VIII, 335
International Federation of Trades Unions VIII, 335
International Federation of University Women.....IX, 302
International Hydrographie Bureau VII, 106, 244; VIII, 562; IX, 294
International Institute for Unification of Private Law.....VIII, 423
International Institute of Agriculture VIII, 339
International Institute of Commerce VII, 246; VIII, 564
International Institute of Intellectual Cooperation, see League of Nations.
International Institute of Statistics...VIII, 517
International Labor Office, see International Labor Organization.
International Labor Organization:
advisory opinion of Permanent Court regarding agricultural conditions VII, 129–130
agricultural production, opinion of Permanent Court.....VIII, 338
amendment to labor part of peace treaties VIII, 417
anthrax committee.....VII, 23
budget.....VIII, 404
competence extends to conditions of labor in agriculture.....VIII, 337
conferences —
advisory opinion of Permanent Court on delegates.....VII, 130
Americans represented at 1st.....VII, 11
constituent statute.....VIII, 585
conventions.....VII, 139–141
Documents of the International Labour Conference.....VII, 145
employers, personal work of.....IX, 570
general conference.....VII, 138; VIII, 585
conventions .....VIII, 586–589
recommendations.....VIII, 589
sessions .....VIII, 586

PAGE

International Labor Organization — Continued.
Governing Body.....VII, 142; VIII, 585
meetings.....VIII, 590–591
members.....VIII, 590
International Labor Office —
administrative section.....VIII, 592
Americans serving in.....VII, 11
anthrax, subcommittee on.....VIII, 507
diplomatic division.....VII, 143; VIII, 592
director.....VII, 143; VIII, 591
duties.....VIII, 591
editorial and translation services VIII, 592
establishment of.....VIII, 591
Industrial and Labour Information VII, 144
industrial hygiene committee.....VII, 23
intelligence and liaison division VII, 144; VIII, 592
International Labour Directory VII, 145; VIII, 593
International Labour Review VII, 144; VIII, 593
Legislative Series.....IX, 144
members.....VII, 138; VIII, 585
members on Temporary Mixed Commission on Armaments.....VII, 148
national correspondents.....VIII, 593
new buildings.....IX, 172
nomination of workers' delegates to conferences.....VIII, 335
Official Bulletin.....VII, 144
origin.....VIII, 585
personnel.....VIII, 592
publications.....VII, 25, 144; VIII, 593
research division.....VII, 143; VIII, 592
sessions.....VII, 139
Special Reports.....VII, 144
Studies and Reports.....VII, 145
organs.....VII, 138; VIII, 585
recommendations.....VII, 141–142
International law:
codification of —
American Congressional action on..IX, 488
Committee on Progressive.....VII, 45, 79; VIII, 420–423; IX, 186
in relation to Permanent Court of International Justice.....VII, 55
International Law Association.....VIII, 423
International Maritime Committee VIII, 423; IX, 189
International Missionary Union.....VII, 35
International Opium Commission at Shanghai, 1909.....VIII, 139
"The International Opium Conferences" by Raymond Leslie Buell..VIII, 19, 35–194
International Opium Convention, 1912, text of.....VIII, 120–128, 408
International Prize Court.....IX, 474
"International Relations" by Raymond Leslie Buell.....VIII, 18

PAGE

International relief:
meetings.....VIII, 566
preparatory committee.....VIII, 566
Union.....IX, 312
International River Commissions for Danube VIII, 526
International Sanitary Convention....VIII, 506
"International Social Progress" by George Alexander Johnston.....VIII, 24
International Students' Associations....VII, 228
International Suffrage Alliance.....IX, 302
International Trade in Arms, Conference on.....IX, 232–238
"International Tribunals" by W. Evans Darby.....IX, 475
International University Information Office VII, 108, 228; IX, 298
Interracial cooperation, bibliography..VIII, 28
Iraq:
frontier dispute with Turkey VIII, 449–450; IX, 128–130, 191
mandate for.....VII, 234; VIII, 486
Ireland:
reparation percentage under Experts' plan.....VIII, 305
Irish Free State:
arbitration treaties.....IX, 604
budget unit of League of Nations....VIII, 405
member of —
conference of signatories to Protocol of Signature of Court.....IX, 626
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Second Opium Conference.....VIII, 192
permanent delegate to League VIII, 620; IX, 156
signatory of protocol of World Court IX, 567
Isabelle, Etienne.....VIII, 533
Iseghen, M. van.....IX, 543
Ishii, Viscount.....VIII, 276, 291; IX, 161, 211
Ismet Pasha.....VII, 591, 601, 602
Italy:
agreement regarding distribution of Dawes annuities.....VIII, 276–291
agreement with Germany, Aug. 30, 1924 VIII, 257–261
agreements relative to partition of Turkey VII, 578
arbitration —
blockading powers preference.....IX, 468
Canevaro claim.....IX, 469
seizure of the *Carthage*.....IX, 469
seizure of the *Manouba*.....IX, 469
seizure of the *Tavignano*.....IX, 469
Tunisian mahones *Kamouna* and *Gaulois*.....IX, 469
arbitration settlements.....IX, 476

PAGE

Italy — Continued.
arbitration treaties —
Argentina, 1907 ..... IX, 591
Belgium, 1910 ..... IX, 592
Bolivia, 1911 ..... IX, 592
Brazil, 1911 ..... IX, 592
Chile, 1913 ..... IX, 593
Costa Rica, 1910 ..... IX, 592
Cuba, 1903 ..... IX, 590
Denmark, 1905 ..... IX, 591
Ecuador, 1911 ..... IX, 592
France, 1903 ..... IX, 590
Great Britain, 1904 ..... IX, 590
Guatemala, 1913 ..... IX, 593
Honduras, 1913 ..... IX, 593
index of ..... IX, 587–607
Mexico, 1907 ..... IX, 591
Netherlands, 1909 ..... IX, 592
Norway, 1910 ..... IX, 592
Paraguay, 1911 ..... IX, 592
Peru, 1905 ..... IX, 591
Portugal, 1905 ..... IX, 591
Rumania, 1926 ..... IX, 600
Russia, 1910 ..... IX, 592
Siam, 1925 ..... IX, 598
Spain, 1910, 1926 ..... IX, 592, 600
Sweden, 1911 ..... IX, 592
Switzerland, 1904, 1924 ..... IX, 590
United States, 1908, 1914 ... IX, 523, 593
Uruguay, 1914 ..... IX, 594
attitude on Protocol for Pacific Settlement IX, 178
budget unit of League of Nations .. VIII, 405
claims under Art. 296 of treaty of Versailles ..... IX, 579
commission of inquiry —
cannon shots fired at Tunisian mahones *Kameuna* and *Gaulois* ..... IX, 470
seizure of *Tavignano* ..... IX, 470
treaty with United States, 1914 .... IX, 543
conciliation commission with Switzerland VIII, 413
Corfu crisis ..... VII, 177–181
demands made of Greece for murders of delimitation commission .... VII, 177
German occupation costs to Apr. 30, 1921 ..... VIII, 268
health service, international cooperation VII, 203
loan to Austria ..... VIII, 451
malaria ..... VIII, 504
member of —
conference of signatories to Protocol of Signature of Court ..... IX, 626
European Health Conference ..... VII, 204
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142

PAGE

Italy — Continued.
Permanent Advisory Commission on Armaments ..... VII, 146
Permanent court of International Justice ..... VIII, 581
Second Opium Conference ..... VIII, 192
murder of members of Albanian delimitation commission ..... VIII, 438–442
occupation of Corfu ..... VIII, 438–442
project of Institute of Private International Law ..... VIII, 423
protest at abrogation of capitulations in Turkey ..... VII, 569
receipts from Ruhr occupation ..... VIII, 284
reparation —
approval of Experts' plan ..... VIII, 224
coal received ..... VIII, 288
expenses charged against payments VIII, 297
payments Nov. 11, 1918–Feb. 28, 1925 VIII, 295–296
percentage under Experts' plan ... VIII, 305
purchasing of commodities ..... VIII, 294
recovery of arrears ..... VIII, 288
restitution of art objects ..... VIII, 281
signatory of Final Protocol of Locarno Conference ..... IX, 24
signatory of protocol of World Court .. IX, 567
signed protocol of London Conference VIII, 236–237
S.S. *Wimbledon* case decided by Permanent Court ..... VII, 127
troops landed in Anatolia ..... VII, 573

Jackman, Comdr. E ..... VII, 121
Jaffa concessions ..... VIII, 359
James, Eldon R ..... VII, 8
James, Col. S. P ..... VIII, 504
Janaccone, Pasquale ..... VIII, 309
Jancovici, D ..... VII, 148; VIII, 403
Janina affair, see Corfu.
Janssen, Albert-E ..... VII, 148, 190, 215; VIII, 309, 511, 514, 521
Japan:
agitation in United States against Japanese immigration ..... VII, 257
agreement regarding distribution of Dawes annuities ..... VIII, 276–291
agreement with Germany, Aug. 30, 1924 VIII, 257–261
amendment relative to "domestic questions" ..... VII, 522–523
amendment to Protocol for Pacific Settlement of International Disputes VII, 515
American exclusion law, 1924 —
Ambassador Hanihara's note respecting "gentlemen's agreement" to Secretary Hughes ..... VII, 358–362
effect on Japanese public opinion VII, 314–315

PAGE

Japan — Contnued.
note of Ambassador of June 4. 1913, protesting.....VII, 300–301
note of April 17, 1924, to United States VII, 364–365
note of April 18, 1924, from United States.....VII, 365–366
opinions on law.....VII, 314–315
passage of protesting resolutions..VII, 315
reply of Secretary Hughes on "gentlemen's agreement," April 10, 1924 VII, 362
terms of.....VII, 313, 367–370
U. S. House report 350.....VII, 294–297
arbitration —
perpetual leases.....IX, 468
arbitration settlements.....IX, 476
arbitration treaties —
index of.....IX, 587–607
Switzerland, 1924.....IX, 598
United States, 1903.....IX, 523, 591
bibliography.....VIII, 8
budget unit of League of Nations....VIII, 405
civil code.....VII, 329
commercial treaties with United States VII, 373–374, 378
commercial treaty with Russia.....VII, 281
disabilities against foreigners.....VII, 329
discrimination against nationals of VII, 298–305
drug manufacturing power.....VIII, 67
emigration —
restriction on.....VII, 281
to Korea.....VII, 282
Emigrants' Protection Law.....VII, 281
foreign land holders in.....VII, 331
foreigners, treatment of.....VII, 328–331
"gentlemen's agreement" with United States.....VII, 287–293, 374, 377
immigration —
American exclusion act of 1924 VII, 367–370
laws on.....VII, 328
limitation of Mexican.....VII, 288
rights under mandates.....VII, 299–300
U. S. House of Representatives report 350.....VII, 294–297
industrialization of.....VII, 282
judicial settlement treaty, 1924.....IX, 585
land laws.....VII, 330
mandates.....VII, 23
declaration of Dec. 17, 1920, relative to class "C".....VII, 300
German islands north of Equator VIII, 489
member of —
Advisory Committee on Traffic in Opium.....VII, 195
conference of signatories to Protocol of Signature of Court.....IX, 626
European Health Conference.....VII, 204
First Opium Conference.....VIII, 169

PAGE

Japan — Continued.
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
Permanent Advisory Commission on Armaments.....VII, 146
memorandum of United States of February 23, 1911.....VII, 379
morphine smuggling.....VIII, 68
naturalization laws.....VII, 328, 331
nonnaturalization of immigrants in United States.....VII, 292
number Japanese living abroad. 1920 VII, 283
opium —
attitude at conferences.....VIII, 105
attitude on abolition of smoking VIII, 96
attitude on transit.....VIII, 91
auction system maintained.....VIII, 51
certificate system in force.....VIII, 51
control in Formosa.....VIII, 58
member of antismoking conference VIII, 87
production.....VIII, 69
revenue from Formosa.....VIII, 63
use for legitimate purpose only..VIII, 68
permanent delegate to League of Nations VIII, 620; IX, 156
"picture brides".....VII, 293, 295
population density per square mile....VII, 282
protest of May 31, 1924, to United States on exclusion act.....VII, 372–375
racial equality proposal.....VII, 298–299
reparation —
approval of Experts' plan.....VIII, 224
debit for Shantung railways and mines VIII, 287
nonmember of Reparation Commission VIII, 307, 309
percentage under Experts' plan..VIII, 305
signatory of protocol of World Court IX, 567
signed protocol of London Conference VIII, 236–237
status as first class power.....VII, 298
S.S. *Wimbledon* case decided by Permanent Court.....VII, 127
treaties of 1894 and 1911 with United States.....VII, 289–290
treatment of Japanese by foreign countries.....VII, 332
"Japan" by Joseph H. Longford.....VIII, 9
"Japan: An Attempt at Interpretation" by Lafcadio Hearn.....VIII, 9
"Japan and the United States" by Payson Jackson Treat.....VIII, 17
"Japan: Its History, Arts and Literature" by Capt. Frank Brinkley.....VIII, 9

PAGE

"Japan, Real and Imaginary" by Sydney Greenbie ..... VIII, 10
Japanese and Korean Exclusion League VII, 287
"Japanese Expansion and American Policies" by James F. Abbott ..... VIII, 16
"Japanese Immigration" by Raymond Leslie Buell ..... VII, 277–380; VIII, 27
"Japanese Immigration and Colonization" by Valentine Stuart McClatchy VIII, 27
"Japan's New Policy in Korea and Formosa" by Ralston Hayden .... VIII, 21
"Japan's Pacific Policy" by Kiyoshi Karl Kawakami ..... VIII, 33
Jason, Dr. ..... VIII, 386
Java, production of coca leaf ..... VIII, 47
Jaworzina boundary question VII, 119, 135–137; VIII, 353
Jay, John ..... VII, 78; IX, 479, 480
Jay, Nelson D ..VII, 13, 106; VIII, 322, 385
Jay treaty of 1794 ..... IX, 457, 479
Jebb, Eglantyne ..... VIII, 546; IX, 303
Jebenne, Vice-Adml ..... VII, 146
Jelinek, Hans ..... IX, 298
Jenks, Jeremiah W ..... VIII, 25, 391
Jensen, Adolph VII, 215, 218; VIII, 511; IX, 274
Jeppe, Karen ..... VIII, 549
Jerusalem Municipal Council ..... VIII, 372
Jitta, Dr. N. M. Josephus VII, 202, 217; VIII, 497, 507, 521
Johnson, Maj. Bascom VII, 19, 110; VIII, 389, 391; IX, 303
Johnson, Hiram W ..... VII, 39
Johnston, G. A VII, 144; VIII, 24, 592; IX, 303
Jones, Wesley L ..... IX, 538
Jongh, A. A. de ..... VIII, 128, 130, 133, 135
Jordan, David Starr ..... VII, 318
Jordan, Sir John VII, 195, 198; VIII, 61, 64, 85, 95, 553; IX, 306
Jorge, Dr. Ricardo VII, 202; VIII, 497, 506, 507
Jorgensen, P. J ..... IX, 542
Josey, Charles Conant ..... VIII, 28
Jouhaux, Léon VII, 148; VIII, 467, 590; IX, 235
Jovanovich, Mikhailo ..... VII, 127; VIII, 582
Judicial settlement ..... IX, 567
see also Arbitration.
Julin, Dr ..... IX, 274
Jurisdiction, domestic ..... IX, 558
Jusserand, Jules ..... IX, 522

Kaeckenbeeck, Georges ..... VIII, 352
Kaku, Sagataro VIII, 169, 172, 189, 191, 194
Kalaw, Maximo M ..... VIII, 20
Kalfoff, Christo VII, 553; VIII, 619; IX, 160, 211, 216
Kallab, Jaroslav ..... IX, 296
Kani, Lieut. M ..... VIII, 464
Kapsambelis, M ..... VIII, 362
Karnebeek, Jonkheer van ..... VII, 112
Kars ..... VII, 576
Karsnicki, J ..... VIII, 276, 291

PAGE

Kat Angelino, A. D. A. de VIII, 169, 172, 189, 191, 194
Kawakami, Kiyoshi Karl ..... VIII, 27, 33
Keane, Augustus Henry ..... VIII, 29
Keller, Dr. A ..... IX, 291
Keller, Helen R ..... VII, 10, 109; VIII, 388
Kellogg, Frank B.:
correspondence with Mexico IX, 375, 378, 379, 380, 382, 390, 399
delegate to London Reparation Conference ..... VIII, 231, 276, 291
letter to Allied Governments on allocation of reparation payments VIII, 265–266
letter to League on reservations to World Court ..... IX, 618
note of Aug. 5, 1924, on payment of claims against Germany ..... VIII, 269
reply to conference of signatories to Statute of Permanent Court ..... IX, 623
Kellogg, Vernon L ..... VIII, 539
Kemal, Mustapha:
leader of Nationalist movement .... VII, 575
officer of Ottoman Government ..... VII, 573
president of Congresses of Erzerum and Sivas, 1919 ..... VII, 574
president of Turkish Republic ..... VII, 575
Kennedy, Dr ..... VIII, 549
Kennedy, E ..... VII, 146; VIII, 464
Kenya, restriction of immigration to ... VII, 334
Keppel, Frederick P ..... VII, 488
Keyes, Charles ..... VII, 36
Kiel Canal ..... VII, 127–128; VIII, 345
Kindersley, Sir Robert M ..... VIII, 325
King, W. L. Mackenzie ..... VII, 333; IX, 155
King-Hall, Stephen ..... VIII, 31
Kingsley, Darwin P ..... VII, 317
Kircher, A ..... VIII, 114, 189, 194
Kiyokawa, Rear Adml. J. VII, 146; VIII, 464; IX, 238
Klecanda, Gen. Vladimir VII, 147; VIII, 464, 467
Klein, Prof ..... VIII, 521
Klercker, F. de ..... VIII, 136
Knaffl-Lenz, Dr. Erik ..... VIII, 507
Knox, Philander C ..... VII, 330; IX, 532
Kollen, Gerrit J ..... VIII, 133
Komarnicki, Dr. Titus ..... IX, 626
Koo, Vi Kyuin Wellington ... VII, 102; IX, 542
Korea:
bibliography ..... VIII, 12, 21
Japanese emigration to ..... VII, 282
"Korea, the Hermit Nation" by William Elliot Griffis ..... VIII, 12
"Korea's Fight for Freedom" by Frederick A. McKenzie ..... VIII, 21
Kossman, M ... VII, 231; VIII, 575; IX, 327
Koumanoudi, Dr. Kosta .... VII, 553; VIII, 619
Kramar, Karel ..... VII, 102
Kriege, M ..... IX, 468

PAGE

Kröller, A. G.....VII, 183; VIII, 444, 530
Kuni Usui, Capt.....VII, 146
Kunzl Jizersky, Rudolf.....VII, 147; VIII, 464
Kusama, Shiko.....VII, 202

Labor Office, see International Labor Organization.
Labor Organization, International, see International Labor Organization.
Labranca, Dr.....VIII, 504
La Fontaine, Henri.....VIII, 541
Lagden, Sir Godfrey Yeatman.....VIII, 8
Lahr, M. von.....VIII, 530
Laidlaw, Mrs. James Lees.....VII, 35
Laidoner, Genl. F.
VII, 553; VIII, 619; IX, 198, 200
Lamarche, J.....VIII, 133
Lambert, Major..VII, 231; VIII, 575; IX, 327
Lammasch, M.....IX, 468
Lamont, Thomas W.....VII, 317
La Motte, Ellen N.....VIII, 19
Lamoureux, M.....VIII, 294
Lane-Clayton, Dr. J.....VIII, 505
Lange, Dr. Christian.....VII, 393; IX, 234
Langkjaer, H.....VII, 148
Lankas, Dr. Otokar.....VIII, 533
Lansing, Robert.....IX, 412
Lapradelle, Albert de.....VII, 125; VIII, 581
Lara, Genl. Manrique de....VII, 242; VIII, 573
Lardizabal, José M.....VIII, 135
Lardy, M.....IX, 468
Larnaude, Ferdinand..VII, 102, 164; VIII, 426
Larned, Ruth.....VIII, 391
Latané, John H.....VII, 35
Latham, J. G.....IX, 637
Lathrop, Charles N.....VII, 34
Lathrop, Julia C.....IX, 303
Latourette, Kenneth Scott.....VIII, 9
Latvia:
arbitration treaties—
Esthonia, 1923, 1925.....IX, 596, 598
Finland, 1925.....IX, 598
index of.....IX, 587–607
Lithuania, 1925.....IX, 598
Poland, 1925.....IX, 598
Sweden, 1925.....IX, 598
budget unit of League of Nations...VIII, 405
compulsory jurisdiction of Permanent Court.....VII, 126
member of—
conference of signatories to Protocol of Signature of Court.....IX, 626
European Health Conference.....VII, 204
International Labor Organiztionation
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 585; IX, 142
Permanent Court of International Justice.....VIII, 581
minorities protection guaranty.....VII, 240

PAGE

Latvia — Continued.
optional clause of World Court signed IX, 567
declaration.....IX, 642
permanent delegate to League
VIII, 620; IX, 156
rights to minorities guaranteed.....VII, 240
signatory of Protocol for Pacific Settlement of International Disputes VII, 391
signatory of protocol of World Court
IX, 567
treaty with Poland on conciliation commissions.....VIII, 413
Laubach, Frank Charles.....VIII, 12
Lauck, W. Jett.....VIII, 25
Laughlin, Dr. Harry H.....VIII, 391
Laurin, P. G.....VIII, 566
Lausanne, American treaty of.....VII, 565–603
Lausanne Conference:
American interests in aide-mémoire of October 30, 1922.....VII, 581–582
commercial intercourse between Allies and Turkey.....VII, 580
letters exchanged on treatment of religious, scholastic and medical establishments.....VII, 602–603
problems of.....VII, 579–582
protocol on concessions.....VIII, 372–374
reparation.....VII, 580
Lausanne, treaty of
VIII, 359, 360, 457; IX, 128–130, 219
Laviosa, Comdr.....VIII, 307
Lawrence, Rt. Rev. William.....VII, 36
Layton, Walter T.....IX, 220, 226
Lazard, Max.....VIII, 521
League of Nations:
Aaland Islands.....VIII, 425–428
abolition of passports.....VIII, 528
abrogation of inconsistent obligations
VIII, 604
administrative functions.....VII, 231–233;
VIII, 575–579; IX, 327–333
admission of Germany.....IX, 35, 44
Advisory Committee of Jurists on World Court.....IX, 565
Advisory Committee on Traffic in Opium—
conferences proposed.....VIII, 82–85
decision on import certificates.....VIII, 74
drug statistics.....VIII, 75
invitations for conferences recommended to Council.....VIII, 154
legitimate annual requirements of countries.....VIII, 76
meetings.....VIII, 553
mutual exchange of information..VIII, 74
plans for control of exports and imports.....VIII, 86
preliminary work.....VIII, 553
protest on recrudescence of poppy-growing in China.....VIII, 49

PAGE

League of Nations — Continued.
publication of facts of Chinese production ..... VIII, 50
resolution of 5th session on abuse of drugs ..... VIII, 81
resolution on restriction of poppy VIII, 140
resolutions adopted at 5th session VIII, 153
see also Opium.
age of consent ..... IX, 305
age of marriage ..... IX, 305
aims of League, instruction in ..... IX, 300
Albanian dispute ..... VII, 173–175
appointment of organizing commission VII, 102
arbitral committee on Experts' plan VIII, 242
arbitration —
Art. 15, procedure under ..... IX, 557
clauses in commercial matters .... VIII, 413
commercial disputes ..... VIII, 520
Covenant provisions on ..... VIII, 599
architects competition ..... IX, 171
armaments, reduction of —
bacteriological warfare VII, 154; VIII, 418
chemical warfare ..... VII, 153–154
Coordination Commission ..... IX, 238
draft treaty of mutual assistance VII, 155–162
exchange of information .... VII, 150–151
extension of principles of Washington Naval treaty ..... VII, 152–153
private manufacture ..... VII, 151–152
provisions of Art. 8 ..... VIII, 597
regional agreements ..... VII, 154–162
statistical inquiry ..... VII, 150
work accomplished ..... VIII, 463–484
Armenians, assistance to ..... IX, 313–315
Assembly —
Albania admitted ..... VIII, 434
committees . VII, 113; VIII, 395; IX, 160
Covenant provisions on ..... VIII, 594
delegations to Sixth ..... IX, 159
formation of Advisory Committee on Opium ..... VIII, 77
functions ..... VIII, 392–395
inquiry on opium ..... VIII, 78
meetings VII, 112; VIII, 395; IX, 159, 161
obscene publications, suppression of VII, 223–224; VIII, 550
organization and procedure ... VII, 112–113
principal decisions ..... VII, 113–114
private international law, unification of VIII, 423
procedure ..... VIII, 394
protection of minorities ..... VII, 240
protocol of subcommittee of Fifth Assembly ..... VII, 495–502
references ..... VII, 112
relief of peoples stricken by calamities VII, 114
repatriation of refugees in Near East VII, 114

PAGE

League of Nations — Continued.
resolutions —
adopted by Fifth ..... VII, 410–413
Armenians ..... IX, 314
codification of international law VIII, 420–421
disarmament, Sept. 6, 1924 VII, 150, 414–415
international economic conference IX, 275
opium, Sept. 27, 1923 ..... VIII, 158, 191
organization of Secretariat ..... VII, 122
Protocol for Pacific Settlement .. IX, 181
reduction of armaments Sept. 6, 1925 VIII, 481
rôle under Protocol system .... VII, 432–433
seat ..... VII, 112
work of the First Committee of Fifth VII, 420–440
work of Third Committee of Fifth VII, 440–452
Assembly Hall ..... IX, 171
attitude of Great Britain on Protocol for Pacific Settlement ..... IX, 173
Austria —
commissioner-general ..... VIII, 453
reports of ..... VIII, 454
financial reconstruction of .. VII, 185–188; VIII, 413, 451–455; IX, 220–228
see Austria.
relief ..... VII, 13
bacteriological warfare .. VII, 154; VIII, 418
Barcelona conference ..... VIII, 523
bibliography, committee on ..... VIII, 540
bills of exchange ..... VIII, 521
biological remedies, conference on .... VII, 23
budget for 1926 ..... IX, 169
budgets ..... VII, 123; VIII, 404; IX, 168
Bulgarian request on marauding bands VII, 175
buoyage ..... IX, 294
calendar reform ..... VIII, 534; IX, 291
Central International Office for Control of the Liquor Traffic in Africa VIII, 564
chemical and bacteriological warfare VII, 154; VIII, 418, 471–472
child hygiene ..... IX, 305
child labor ..... IX, 305
coasts, lighting of ..... IX, 294
codification of international law —
committee on progressive ... VIII, 420–423
diplomatic privileges and immunities VIII, 422
exploitation of maritime resources VIII, 423
extradition and criminal jurisdiction VIII, 422
juridical status of state ships ..... VIII, 422
nationality ..... VIII, 422
piracy ..... VIII, 223
prescription ..... VIII, 423

PAGE

League of Nations — Continued.
private international law.....VIII, 423
procedure of international conferences VIII, 423
responsibility of states for damages VIII, 422
territorial waters.....VIII, 422
commercial disputes, arbitration of..VIII, 520
commission of inquiry on Iraq.....IX, 193
commission of investigation into Bulgaro-Greek dispute
report.....IX, 208–216
committee for protection of children —
age for marriage.....VIII, 549
age of consent.....VIII, 549
declaration of Geneva.....VIII, 548
effects of cinematograph.....VIII, 549
resolution of Council.....VIII, 547
Committee of the Council.....IX, 238
committee on allocation of expenses VIII, 403; IX, 168
Communications and Transit VII, 207–213; VIII, 523–534; IX, 285–294
see Organization for Communications and Transit.
conciliation commissions VIII, 412–413; IX, 572, 574
conference machinery.....VIII, 407–423
Conference on International Trade in Arms, Munitions and Implements of War.....VIII, 472
consumers, protection of.....VIII, 520
cooperation of nonmember states VII, 105–111; VIII, 382–392
coordination commission.....VIII, 465–468
Council —
Aaland Islands dispute.....VIII, 425–428
commission of jurists.....VIII, 426
resolution on.....VIII, 427
action under Protocol.....VII, 407
with view to reconciliation VII, 426–428
adoption of advisory opinion on Polish-Danzig letterboxes.....IX, 126
advisory opinion requested on expulsion of Œcumenical Patriarch...IX, 191
agreement with Austria.....IX, 224
appeal of Albania.....VIII, 434
appointment of Committee on Intellectual Cooperation.....VII, 225
appointment of provisional Economic and Financial Committee.....VIII, 510
arbitral awards under Protocol...VII, 435
clarification of functions by Protocol VII, 445–446
codification of international law..VIII, 420
competence in disputes.....IX, 163
Covenant provisions on.....VIII, 595
Czechoslovak-Polish frontier VIII, 446–447
Danzig administration VII, 232; IX, 984, 332

PAGE

League of Nations — Continued.
deposit of Locarno agreements....IX, 185
disputes.....VII, 163–184; VIII, 424–451; IX, 190–220
distribution of Ottoman public debt IX, 219
"domestic questions"...VII, 395–396, 404
frontier questions.....VIII, 437
functions.....VIII, 397
Greek refugee settlement scheme VIII, 457–460
guaranties.....VII, 398
Hungarian committee of VII, 190; VIII, 456
Hungarian farmers in Rumania VIII, 443; IX, 320
inquiry on private manufacture of arms.....IX, 243
Italo-Greek dispute.....VII, 177–181
meetings....VII, 115; VIII, 399; IX, 162
members...VII, 116; VIII, 400; IX, 162
members in interest.....IX, 163
minutes in *re* American adhesion to Court.....IX, 620
Moslems of Albanian origin in Greece VIII, 448
Mosul dispute.....VIII, 449–450
nomination of preparatory committee on opium conferences.....VIII, 85
nonpermanent members VII, 116; VIII, 400; IX, 162
note of Mar. 13, 1925, on German admission.....IX, 36
opinions.....VII, 492
organization and procedure VII, 116; VIII, 397
pacific settlement methods.....IX, 559
Polish minority in Lithuania.....IX, 324
preparation of plan for World Court IX, 565
principal decisions.....VII, 117–119
procedure on disputes.....VII, 394, 402
procedure on protection of minorities VII, 238–239
question of Iraq frontier.....IX, 191
questionnaire to Greece on minorities IX, 318
questions submitted to preparatory commission for a disarmament conference.....IX, 241
recommendations on export of illicit opium.....IX, 309
references.....VII, 116
reply to German memorandum....IX, 151
resolutions —
Bulgaro-Greek incident.....IX, 204
conference of signatories of Court Statute.....IX, 613
extension of principles of Washington naval treaty.....VII, 152–153
Hungarian optants in Rumania..VII, 182

PAGE

League of Nations — Continued.
Iraq, Sept. 27, 1924 ..... VIII, 487
rôle of Americans in 28th session . VII, 7
sanctions, declaration of ..... VII, 408
Serbo-Albanian frontier ..... VIII, 449
Special Commission of Jurists on interpretation of Covenant ..... VII, 271–272
statement on Protocol for Pacific Settlement ..... IX, 181, 182
study on exercise of right of investigation in Germany, Austria, Hungary and Bulgaria ..... IX, 244
telegram from Bulgaria for meeting IX, 202
Upper Silesian plebiscite .... VIII, 432–434
Upper Silesian social insurance funds IX, 217
Covenant —
abrogation of inconsistent obligations VII, 538
action in case of war ..... VII, 532
adaptation of existing treaties ..... IX, 42
aggression, guaranties against ... VII, 532
amendments to VII, 250, 251, 252, 253, 254, 255, 259, 541; VIII, 411, 415–416, 607
arbitration ..... VII, 533; IX, 560
Art. 10 ..... VIII, 598
Art. 11, procedure under ..... IX, 564
Art. 14 ..... IX, 565
Art. 16, letter of Germany respecting IX, 24, 72–73
Art. 17 discussed ..... VII, 399
commerce, equitable treatment of VII, 540
commission of inquiry ..... IX, 560
comparison of system with that under Protocol ..... VII, 445–449
cooperation of states under VIII, 494–567; IX, 257–316
disputes involving nonmembers .. VII, 537
duties under ..... VIII, 463–567
executive organs ..... VII, 528
guaranties of assistance ..... VII, 398
humanitarian activities ..... VII, 540
immunities ..... VII, 531
international bureaus ..... VII, 540
international engagements remaining valid ..... VII, 538
judicial settlement ..... VII, 533; IX, 560
mandatory system ..... VII, 538–539
membership ..... VII, 528
Monroe doctrine ..... VII, 538
omissions supplied by Protocol VII, 445–449
Permanent Court of International Justice ..... VII, 534
Permanent military, naval and air commission ..... VII, 532
prevention and control of disease VII, 540
promotion of health ..... VII, 541
provisions analyzed ..... IX, 137–141

PAGE

League of Nations — Continued.
qualifications of officials ..... VII, 531
Red Cross ..... VII, 541
registration and publication of treaties VII, 537
report of Special Commission of Jurists on interpretation of ..... VII, 271–272
review of treaties ..... VII, 538
sanctions, application of ..... VII, 397
sanctions of pacific settlement VII, 536–537
seat ..... VII, 531
Secretariat and expenses ..... VII, 530
social activities ..... VII, 540
text of
VII, 249–260, 528–542; VIII, 594–607
Arts, 12, 13, 15, 16, 17 ..... IX, 563
trade in arms, control of ..... VII, 540
traffic in opium and dangerous drugs, control of ..... VII, 540
traffic in women and children, suppression of ..... VII, 540
voting ..... VII, 530
withdrawal ..... VII, 528
customs formalities, international conference on .... VII, 15, 218–219; VIII, 516
Danube navigation ..... IX, 285–288
Danzig, Free City of —
administration by League of Nations VIII, 577
commission for delimitation of port IX, 331
deposit of Polish war material ..... IX, 332
disarmament ..... VIII, 578
guaranty ..... VIII, 577
high commissioner ..... VIII, 577
municipal loan ..... IX, 333
Polish postal service ..... IX, 330
relations with Poland ..... VIII, 578–579
settlement of disputes ..... IX, 329
definition ..... IX, 137–141
delegates permanently at Geneva ..... IX, 155
development of international agreement VIII, 407–423
differences between Covenant system and Protocol system .. VII, 445–447, 450–451
direct relations with states VIII, 424–462; IX, 190–232
disarmament conference, preparatory commission for ..... IX, 239–243
composition of ..... IX, 239
program ..... IX, 240
questionnaire ..... IX, 241
disputes —
Aaland Islands ..... VIII, 425–428
Albanian boundary ..... VIII, 434–436
Austro-Hungarian frontier ..... VIII, 437
between States signatory and nonsignatory of the Protocol ..... VII, 439–440
Bulgarian frontier, armed bands on VIII, 436–437
Bulgaro-Greek incident ..... IX, 201

PAGE

League of Nations — Continued.
Corfu incident.....VIII, 438–442
Czechoslovak-Polish frontier VIII, 446–447
Eastern Carelia.....VIII, 445
expulsion of Œcumenical Patriarch IX, 190–191
frontier between Iraq and Turkey...IX, 191
frontier questions.....VII, 176–177
Greco-Italian affair.....VIII, 438
Hungarian boundary with Serb-Croat-Slovene State.....VIII, 438
Hungarian property in Rumania VIII, 442–443
Hungarian-Czechoslovak frontier VIII, 438
indemnity in Bulgaro-Greek incident IX, 211
involving nonmembers.....VIII, 603
Iraq frontier..VIII, 449–450; IX, 191–201
Jaworzina frontier.....VIII, 446
Memel territory.....VIII, 443–444
monastery of St. Naoum.....VIII, 448
Moslems of Albanian origin in Greece VIII, 447–448
Mosul question VIII, 449–450; IX, 191–201
Poland and Lithuania boundary VIII, 428–432
St. Naoum, monastery of.....VIII, 448
settlement of VIII, 424–450, 598, 600; IX, 190–219
Upper Silesia.....VIII, 432–434
Upper Silesian social insurance funds IX, 217
domestic jurisdiction of States VII, 433–435; IX, 558
draft conventions elaborated..VIII, 419–420
draft treaty of mutual assistance VII, 155–162
duties under Covenant.....IX, 232–258
duties under treaties VIII, 568; IX, 316–333
Economic and Financial Organization VIII, 510–522; IX, 266–285
commercial disputes, arbitration of VIII, 521
customs formalities, international conference on.....VIII, 517
Danzig municipal loan.....IX, 283
double taxation.....VIII, 514; IX, 277
committee of government experts VIII, 515
Economic Committee —
meetings VII, 13; VIII, 511, 515; IX, 266
economic crises.....VIII, 521; IX, 269
equitable treatment of commerce VIII, 519
Esthonian economic reform.....IX, 281
false customs declarations.....IX, 272
Financial Committee —
appointment of president for committee on reparation index of prosperity.....VIII, 242, 315

PAGE

League of Nations — Continued.
meetings..VII, 13; VIII, 512; IX, 277
member of Coordination Commission IX, 238
reconstruction work.....VIII, 513
sources of income.....IX, 278
fiscal debts.....IX, 279
foreign nationals, equitable treatment of.....VIII, 519; IX, 272
import and export prohibitions....IX, 271
mixed committee on economic crises VIII, 521
provisional committee.....VIII, 511
stabilization of prices.....IX, 270
statistics, preparatory committee on IX, 273
tax evasion.....VIII, 514; IX, 277
trade-marks.....IX, 267
trade prohibition.....VIII, 518
unemployment.....IX, 269
unfair competition VIII, 521; IX, 267–269
economic conference.....IX, 274
effect of cinema on children.....IX, 305
electric questions.....VIII, 533
Epidemic Commission.....VII, 202–203
epidemiological bureau at Singapore VIII, 387
equitable treatment of commerce...VIII, 519
Esthonian economic reform.....IX, 281
European river commissions.....VIII, 531
executive organs.....VIII, 595
exercise of right of investigation VIII, 474–480; IX, 244
expenses of VII, 24; VIII, 403–406; IX. 170
finances.....VIII, 403–406; IX, 168
financial reconstruction —
Austria.....VIII, 451–455; IX, 220–228
Hungary.....VIII, 455–457; IX, 223–230
foreign nationals, equitable treatment of VIII, 519
French attitude on Protocol for Pacific Settlement.....IX, 177
French suggestions for reparation guaranties by.....VIII, 226
Germany —
admission to membership.....IX, 16–18
communiqué of council of ministers IX, 143–144
formal application for admission....IX, 154
French memorandum of council of ministers.....IX, 144
memorandum on position.....IX, 149
request for explanation of Art. 16...IX, 154
Greco-Bulgarian emigration commission VII, 241; VIII, 572–574
Greco-Turkish emigration commission VIII, 572–574
Greek minorities in Constantinople...IX, 319
Greek refugee settlement.....IX, 230
guarantees against aggression.....VIII, 598

PAGE

League of Nations — Continued.
Health Organization —
age and sex classification, committee on VIII, 508
anthrax, subcommittee on.....VIII, 507
Assembly resolution, Dec. 10, 1920 VIII, 494
cancer commission.....VIII, 505; IX, 263
composition of.....VIII, 496
cooperation with Latin America .IX, 264
declaration on uses of opium.....VIII, 44
duties under American draft of opium convention.....VIII, 179
epidemic commission VII, 202–203; VIII, 501–502
Epidemiological Report..VII, 21; VIII, 502
epidemiological service.....IX, 258
European Health Conference....VIII, 509
General Advisory Health Council VII, 200, 201; VIII, 496
general health committee VII, 199; VIII, 495
Health Committee, see Standing Health Committee.
Health Section of Secretariat VII, 202; VIII, 497
interchange of public health personnel VII, 203; VIII, 499–501; IX, 259
joint causes of death, committee on VIII, 507, 508
malaria commission....VIII, 504; IX, 263
medical director.....VII, 201
mortality statistics.....IX, 263
opium commission.....VIII, 507
Permanent Health Organization VIII, 495–499
permanent standards committee..VIII, 503
provisional health organization..VIII, 494
meetings.....VII, 202; VIII, 498
public health personnel, interchange of.....VIII, 499–501
public health training.....VIII, 505
commission on.....VIII, 505
quarantine clearance of ships.....VIII, 506
commission on.....VIII, 507
sanitary conventions.....VIII, 498
sera conferences .VII, 205–206; VIII, 503
serological and biological ..VIII, 502–503
sleeping sickness.....VIII, 505; IX, 262
standard million population, committee on.....VIII, 507
Standing Health Committee —
meetings.....VII, 200, 201; VIII, 496, 498; IX, 258
members of.....VIII, 497
still-births, committee on .....VIII, 508
Technical Laboratory Conference..VII, 205
tropical diseases.....VIII, 505
subcommittee on.....VIII, 506
tuberculosis mortality, commission on VIII, 508; IX, 262

PAGE

League of Nations — Continued.
vital statistics.....VIII, 507; IX, 265
waterways commission.....VIII, 507
work of.....VIII, 498
heroin, control of.....VIII, 115
Hungary —
commissioner-general.....VIII, 457
farmers in Rumania.....IX, 320
financial reconstruction VIII, 455–457; IX, 228–230
immigration, position regarding.....VII, 325
immunities of officials.....VIII, 597
Indian hemp, control of.....VIII, 115
industrial hygiene committee.....VII, 23
infant mortality.....IX, 305
inland navigation.....IX, 289
Institute of Intellectual Cooperation VIII, 539; IX, 295, 296
arts and letters, subcommittee on IX, 297
arts section.....IX, 297
corresponding members.....IX, 296
general questions.....IX, 297
information section.....IX, 297
legal section.....IX, 297
literary section.....IX, 297
scientific section.....IX, 297
subcommittees .....IX, 297
university questions section.....IX, 297
instruction of youth.....IX, 299
Assembly resolution.....IX, 300
Intellectual Cooperation, Committee on —
American committee.....VIII, 538
conditions on intellectual work...VIII, 537
exchange of publications..... VII, 228
Index Bibliographicus..VII, 228; VIII, 540
intellectual property.....VIII, 542
International Institute of Intellectual Cooperation.
see League of Nations, Institute of Intellectual Cooperation.
International University Information Office.....VIII, 542
interuniversity relations.....VIII, 541
meetings..VII, 226; VIII, 537; IX, 295
members.....VIII, 536–537; IX, 295
national committees...VII, 227; VIII, 538
organization of library cooperation VII, 228
preparation of technical conferences VII, 228
prevention of smuggling of works of art and antiquities.....VII, 229
protection of scientific property..VII, 227
subcommittees on intellectual property, bibliography, universities.....VII, 226
utilization of International Bibliographical Institute at Brussels..VII, 228
international agreement, development of.....VIII, 407–423; IX, 173

PAGE

League of Nations — Continued.
International Association for Promotion of Child Welfare VII, 245–246; VIII, 547, 563
International Bureaus Section VII, 243–247; VIII, 561, 606
International Commission for Air Navigation.....VIII, 563
International Committee on Agriculture VIII, 565
international engagements in force VIII, 408–415
international engagements not in force, June 1, 1925.....VIII, 415–418
International Hydrographic Bureau VIII, 562
International Institute of Commerce VIII, 564
International Institute of Intellectual Cooperation.
see League of Nations, Institute of Intellectual Cooperation.
international law, committee on progressive codification of.....IX, 187
see also League of Nations, codification.
international radio problems.....VIII, 533
International Straits Commission, establishment of.....VII, 590
international trade in arms, conference on —
agreements.....IX, 232
committees.....IX, 233
composition of.....IX, 232, 233
convention.....IX, 234
protocol relating to chemical and bacteriological warfare.....IX, 237
signatories of convention.....IX, 236
International University Information Office.....VIII, 542; IX, 298
invitation to United States to participate in discussion on mandates.....VII, 23
Iraq frontier...VIII, 449–450; IX, 191–201
Jewish minorities in Hungary.....IX, 325
judicial settlement.....VIII, 599
legal aid, conference on.....VII, 16
letter of Mar. 29, 1926, from Secretary-General to Secretary of State of the United States.....IX, 618
liaison offices.....IX, 167
limitation of national expenditures on armament.....VIII, 472–473
mandated territories —
annual reports.....IX, 248
application of international conventions to.....IX, 247
capital in.....IX, 246
Caprivi Zipfel.....IX, 248
character.....IX, 249
classes —
"A".....VIII, 486
"B".....VIII, 489
"C".....VIII, 489

PAGE

League of Nations — Continued.
Covenant provisions on.....VIII, 485, 489
examination of reports.....VIII, 492
French Togoland.....IX, 249
history of..VII, 23–24; VIII, 485–493; IX, 246–253
loans.....VIII, 492
national status of inhabitants of..VIII, 492
petitions.....IX, 251
slavery, temporary committee on VIII, 493
sleeping sickness in.....VIII, 505–506
system of.....VIII, 604
Tanganyika.....IX, 250
members of..VII, 104; VIII, 379–380, 594; IX, 142
obligations of.....IX, 35
Memel territory.....VII, 183–184
methods of pacific settlement.....IX, 557
minorities —
Assembly resolution, Dec. 15, 1920 VIII, 568
clauses in treaties of peace.....VIII, 568
Council report Oct. 2, 1921.....VIII, 568
in Turkey.....VII, 589
petitions.....VIII, 571
procedure.....VIII, 570
protection of.....IX, 316–326
system.....VIII, 569
treaties under guaranty of VII, 237; VIII, 569–570
mitigation of suffering.....IX, 312
Neutral House.....VIII, 549
new buildings.....IX, 171
notes —
from Germany, Dec. 12, 1924 IX, 145–149
of American chargé d'affaires at Bern to Secretary-General.....IX, 621
of Secretary of State of the United States to Secretary-General, Mar. 2, 1926.....IX, 617
obscene publications, conference on VII, 15, 223–224; VIII, 550
Oder river system.....VIII, 527
opium —
advisory committee.....IX, 306
annual reports.....IX, 309
assessors.....VIII, 77
certificate system.....IX, 309
commission of inquiry for Persian limitation.....VIII, 110; IX, 311
convention of 1912.....VIII, 552
Covenant provision on.....VIII, 77
first conference —
agenda.....VIII, 556
history of.....VIII, 552
illicit traffic.....IX, 307
import certificates.....VIII, 73, 553
information on drug seizures.....VIII, 554
international commission, 1909...VIII, 552
limitation of production.....IX, 310

PAGE

League of Nations — Continued.
narcotic offenses treaty.....IX, 310
Permanent Central Board.....VIII, 117
Persian export.....IX, 308
second conference —
agenda.....VIII, 557
traffic.....VII, 194–198; VIII, 552–557
IX, 308–312
work of Advisory Committee VIII, 77–78
see also Opium.
Organization for Communications and Transit —
advisory and technical committee VIII, 523
Barcelona conference 1921.....VIII, 525
buoyage and lighting of coasts.....IX, 294
calendar reform .....VIII, 534; IX, 291
conferences.....VIII, 525–526
convention and statute on freedom of transit.....VIII, 525
convention and statute on régime of navigable waterways of international concern.....VIII, 525
Danube navigation.....IX, 285
Hines report.....IX, 285–288
declaration recognizing the right to a flag.....VIII, 526
electric power.....VIII, 526
electric questions.....VIII, 533
hydraulic power.....VIII, 526
inland navigation.....VIII, 531
international régime of railways..VIII, 526
international road certificates.... IX, 292
meetings.....VIII, 525
members.....VIII, 524
Oder river system.....VIII, 527
origin.....VIII, 523
passports.....VIII, 528
ports and maritime navigation...VIII, 529
committees.....VIII, 530
recommendations relative to international ports.....VIII, 526
Rhine navigation..... IX, 285
road traffic.....VIII, 534; IX, 291
Saar railroads.....VIII, 527
Second General Conference.....VIII, 526
technical committee on buoyage and coast lighting .VIII, 530, 531; IX, 294
technical hydraulic system commission VIII, 531
telegraphic questions..... IX, 293
tonnage measurement..VIII, 532; IX, 289
transport by rail .....VIII, 532
wireless communication.....VIII, 533
organization of .....VII, 8
organs .....VIII, 393–406
origin .....VII, 101; VIII, 379
original members .....VII, 542; VIII, 608
pacific settlement of disputes . VIII, 424–450
procedure..... VIII, 424–425; IX, 557
passport conference.....IX, 290

PAGE

League of Nations — Continued.
Permanent Advisory Commission on Armaments.....VIII, 462–463
composition and functions of.....VIII, 475
inquiry on extension of principles of Washington naval treaty.....VIII, 473
Permanent Court of International Justice, Covenant provisions.....VIII, 600
permanent delegates.....VIII, 620
Permanent Mandates Commission —
constitution.....VII, 24; VIII, 490
meetings.....VIII, 491
members.....VIII, 490
reports.....IX, 247, 248
resolution on national status of inhabitants.....VIII, 491
see also League of Nations, Mandated Territories.
Permanent, Military, Naval and Air Commission.....VIII, 598
ports and maritime navigation.....VIII, 529
Ports, Waterways and Railways, Committee on.....VIII, 523
private manufacture of implements of war .....VIII, 468; IX, 243
procedure on disputes under Covenant VII, 445–464
promotion of health.....VIII, 607
protection of minorities...VIII, 568; IX, 316
protocol for pacific settlement of disputes.....IX, 15, 173
British objection.....IX, 15, 16
see Pacific settlement.
public health personnel.....VII, 21
publications of.....VII, 25
qualifications of officials.....VIII, 597
Ramsay MacDonald's suggestion on reparation agreements.....VIII, 227
Red Cross.....VIII, 607
reduction of armament..VII, 146–162; VIII, 463–485; IX, 232–246
refugees —
certificates of identity to Russian VIII, 412
Greek loan.....VIII, 457–460
high commissioner for.....VIII, 457
reports on Greek .....VIII, 459
settlement scheme for Greek VIII, 457–460
régime of navigable waterways, convention on .....VIII, 409, 410
registration of treaties
VII, 14, 192–193; VIII, 461–462
relation of Locarno agreements....IX, 22–24
relation of Permanent Court of International Justice to..VII, 36–38, 62–63, 64
repatriation of foreign children..... IX, 305
report from Permanent Central Board under Opium Convention..... VIII, 186
resolution on International Opium Convention.....VIII, 72
road traffic.....VIII, 534; IX, 291

PAGE

League of Nations — Continued.
Rockefeller Foundation grants.....VIII, 387
Saar basin, territory of —
Council action.....VIII, 575–579
Governing Commission VIII, 575; IX, 327
plebiscite.....VIII, 576
railroads.....VIII, 527
sanctions of pacific settlement.....VIII, 602
sanctions under Protocol.....VII, 443–449
scale of allocation of expenses.....IX, 170
seat.....VIII, 597
Secretariat —
accountants' branch.....VII, 121; IX, 167
administrative commissions
VII, 120; IX, 167
Americans in.....VII, 9–11
disarmament section.....VII, 121; IX, 167
distribution branch.....IX, 167
drafting committee.....IX, 167
economic and financial section
VII, 120; IX, 167
editor of *Official Journal*.....IX, 167
establishment VII, 121; VIII, 401; IX, 167
expenses.....VIII, 596
financial administration VII, 120; IX, 166
general organization
VII, 120; VIII, 401; IX, 166
health section.....VII, 121; IX, 167
information section.....VII, 120; IX, 166
internal control office
VII, 121; VIII, 402; IX, 167
interpreters.....VII, 121
interpreters and translators.....IX, 167
legal section.....VII, 120; IX, 166
library.....VII, 121; IX, 167
mandates section.....VII, 120; IX, 167
members.....IX, 166
military, naval and air subcommissions
VII, 121; IX, 167
minorities questions.....VII, 120; IX, 167
opium traffic.....VII, 121; IX, 167
organization.....VII, 120–121
personnel.....VII, 120–121; IX, 140, 166
political section.....VII, 120; IX, 166
précis-writing department
VII, 121; IX, 167
questionnaire on suppression of obscene publications.....VII, 224
registry.....VII, 121; IX, 107
secretariat of the staff committees
VII, 121; IX, 167
Secretary-General.....VII, 120; IX, 166
social questions
VII, 121; VIII, 606; IX, 167
special organizations
VII, 120–121; VIII, 402; IX, 167
staff branch.....IX, 167
transit section.....VII, 121; IX, 167
translators.....VII, 121
Under Secretaries-General VII, 120; IX, 166

PAGE

League of Nations — Continued.
verbatim reporter.....IX, 167
sera and serological tests, conferences on
VII, 23
slavery commission —
draft convention.....IX, 253
text of.....IX, 255
slavery, temporary committee on...VIII, 493
states invited to accede to the Covenant
VIII, 608
statistics, preparatory committee on IX, 273
supervisory commission....VIII, 403; IX, 168
surplus in accounts.....IX, 169
system of pacific settlement VII, 446; IX, 556
Technical Laboratory Conference..VII, 205
technical organizations.....VIII, 407
telegrams received from Latin American countries.....IX, 217
telegraphic questions.....IX, 293
Temporary Mixed Commission for Reduction of Armaments.....IX, 14
tentative draft of a treaty for....VII, 554–560
tonnage measurement....VIII, 532; IX, 289
trade prohibition.....VIII, 518
traffic in women and children, see Women, traffic in.
transit —
convention on freedom of.....VIII, 409
see League of Nations, Organization for Communications and Transit.
treaties, registration of....VIII, 461–462, 603
publicity.....VIII, 462, 603
Treaty Series.....VII, 193; VIII, 462
Turkish minorities in Western Thrace IX, 319
unfair competition.....VIII, 520
unit for 1926.....IX, 170
United States —
Americans cooperating unofficially
VIII, 384–389
government representatives accredited
VIII, 382–384
units allocated to Member States VII, 123–124
Upper Silesian dispute.....VII, 170–173
voting and procedure.....VIII, 596
wireless communication.....VIII, 533
withdrawal.....VIII, 594
women and children, traffic in —
advisory committee on protection of children and of youth.....VIII, 545
advisory committee reorganized..IX, 302
committee on traffic in women....VIII, 544
assessors.....IX, 302, 303
members of.....VIII, 545
work of.....IX, 304
convention on suppression.....VIII, 410
Covenant provisions on.....VIII, 544
meetings.....VIII, 546
work of Child Welfare Committee
IX, 304–305
work of.....VIII, 424–567

PAGE

League of Nations Commission, membership ..... VII, 102; IX, 555
League of Nations House ..... VIII, 549
League of Nations Non-Partisan Association ..... VII, 35
League of Red Cross Societies .... VIII, 495, 501
League to Enforce Peace:
  committee for preparation of draft convention ..... VII, 554
  draft of treaty for a league of nations VII, 555–560
  historical note ..... VII, 554–555
  Philadelphia meeting, May 16–18, 1918 VII, 554
  program of ..... IX, 555
  "Win the War for Permanent Peace" campaign ..... VII, 554
Leak, D. A ..... VII, 121
Leary, Comdr. Herbert ..... VIII, 383
Lebanon, the ..... VII, 24
Lehrun, A ..... VII, 148
Lee, Frederic S ..... VIII, 391
Lefort, M ..... IX, 642
Legal aid, conference on .... VII, 16; VIII, 419
Legaré, Hugh S ..... IX, 487
Legislative Series ..... VIII, 593
Lehmann, Baron Rodolphe ..... IX, 626, 642
Leitmaier, Dr. Marc ..... IX, 624, 637
Leland, Dr. Waldo G ... VII, 16, 108; VIII, 387
Lemaresquier, Charles ..... IX, 171
Lemieux, Rodolphe ..... VII, 336
Lenroot, Irvine L ..... VII, 39
Leone, Capt. Ugo VII, 121; VIII, 464; IX, 238
Leverve, G ..... VIII, 309, 326
Levinson, S. E ..... VII, 393
Liberal Federation of India ..... VIII, 44
Liberia:
  arbitration settlements ..... IX, 476
  arbitration treaties —
    United States, 1926 ..... IX, 523, 600
  budget unit of League of Nations .... VIII, 405
  compulsory jurisdiction of Permanent Court ..... VII, 126
  member of —
    conference of signatories to Protocol of Signature of Court ..... IX, 626
    International Labor Organization VII, 138; VIII, 585
    League of Nations VII, 104; VIII, 380; IX, 142
    Permanent Court of International Justice ..... VIII, 581
  optional clause of World Court signed IX, 567
    declaration ..... IX, 642
  permanent delegate to League ..... IX, 156
  signatory of protocol of World Court IX, 567
Lieber, Francis ..... IX, 463
Liechtenstein ..... VIII, 381, 382
Lindsay, Samuel McCune ..... VII, 35
Lithgow, Sir James ..... VIII, 590

PAGE

Lithuania:
  arbitration treaties —
    Latvia, 1925 ..... IX, 598
    Soviet Union, 1926 ..... IX, 601
    Sweden, 1925 ..... IX, 598
  budget unit of League of Nations ... VIII, 405
  dispute with Poland VII, 166–170; VIII, 428–432
  member of —
    conference of signatories to Protocol of Signature of Court ..... IX, 626
    European Health Conference ..... VII, 204
    International Labor Organization VII, 138; VIII, 585
    League of Nations VII, 104; VIII, 380; IX, 142
    Permanent Court of International Justice ..... VIII, 581
  Memel question ..... VIII, 443
  minorities protection treaty ..... VII, 240
  nonsignatory of 1912 convention on opium VIII, 72
  optional clause of World Court signed IX, 567
    declaration ..... IX, 642
  permanent delegate to League of Nations VIII, 620; IX, 156
  Polish minorities ..... IX, 324
  signatory of protocol of World Court IX, 567
Locarno Conference:
  agreements —
    Annex F to ..... IX, 154
    arbitration convention between Germany and Belgium ..... IX, 60–66
    arbitration convention between Germany and France ..... IX, 66
    arbitration treaty between France and Czechoslovakia ..... IX, 74–75
    arbitration treaty between France and Poland ..... IX, 73–74
    arbitration treaty between Germany and Czechoslovakia ..... IX, 72
    arbitration treaty between Germany and Poland ..... IX, 66–71
    collective note to Germany regarding Art. 16 of the Covenant ..... IX, 72–73
    duration of ..... IX, 24
    entry into force ..... IX, 23, 183
    final protocol ..... IX, 54–55
    initialed ..... IX, 183
      purpose of ..... IX, 30
    ratification ..... IX, 23
    relation of, to League of Nations .. IX, 22–24
    Rhineland guaranty ..... IX, 25
    texts of documents ..... IX, 54–75
    treaty of mutual guaranty ..... IX, 55–60
  arbitration instruments ..... IX, 585
  Belgian declarations to German minister at Brussels, Sept. 26, 1925 ..... IX, 53

PAGE

Locarno Conference — Continued.
British acknowledgment of German aide-mémoire.....IX, 52
choice of meeting place.....IX, 51
deposit of ratifications.....IX, 184
documents.....IX, 54–75
duration of.....IX, 21
events leading to.....IX, 10–16
exchanges of views between Governments prior to.....IX, 32–53
French acknowledgment of German aide-mémoire of Sept. 26, 1925.....IX, 51
German reply to French note of Aug. 24, 1925.....IX, 49
history of negotiations.....IX, 19–21
invitation to German Government...IX, 50
invitations to Conference.....IX, 20
location of town.....IX, 20
meeting of jurists in preparation for IX, 20, 50
memorandum of French Government, Feb. 20, 1925.....IX, 34
memorandum of German ambassador of Feb. 9, 1925.....IX, 33
note from French Government to German Government, June 16, 1925.....IX, 35
note from French Government to Germany, Aug. 24, 1925.....IX, 45
note of Germany to Allied Governments, July 20, 1925.....IX, 41
observations of Germany to invitation IX, 20
pacific settlement of Rhine questions..IX, 25
pacific settlement under treaty of mutual guaranty.....IX, 26
Permanent Conciliation Commission IX, 28, 29
postwar Rhineland tension.....IX, 10–12
procedure on ratification.....IX, 31
reply of German Government to French note of June 16, 1925.....IX, 41
selection of date.....IX, 51, 52
signatories of Final Protocol.....IX, 24
significance of treaties.....IX, 7
"spirit of Locarno".....IX, 8–10
summary of treaties.....IX, 25
treaty of guaranty.....IX, 599
"The Locarno Conference, October 5–16, 1925".....IX, 1–75
Loder, Bernard Cornelis Johannes VII, 86, 125, 127; VIII, 421, 581, 582
Lodge, Henry Cabot..VII, 39, 42–43, 307, 312; IX, 479, 515, 532
Logan, Col. James A...VII, 19, 106; VIII, 276, 291, 307, 334
Lohman, M. de Savornin.....IX, 468
Lohner, E.....VII, 148
Lon, Lieut. Col.....VIII, 464
London Conference on reparation payments VIII, 224–264
see also Reparation.
London, Declaration of.....IX, 474
London Health Conference.....VIII, 501
London, protocol of.....VIII, 362
Long, Rear Adml. Andrew T.....VIII, 384
Longford, Joseph Henry.....VIII, 9, 12
Lorentz, H. A..VII, 226; VIII, 536; IX, 295
Loriga, Dr.....VIII, 507
"The Lost Dominion" by Al. Carthill VIII, 22
Loudon, J.....VIII, 111, 137; IX, 542, 544
Loveday, A.....VIII, 513; IX, 274
Løvland, Jørgen.....IX, 543
Lowe, Col. J. S.....VII, 146; VIII, 464
Lowell, A. Lawrence.....VII, 35, 67–76, 554
"The Protocol and its Implications" VII, 518–525
Löwenstein, Dr. F.....IX, 291
Lubomirski, Prince.....VII, 148
Lugard, Sir Frederick VII, 235; VIII, 30, 490, 493
Lugones, L.....VIII, 536; IX, 295, 297
Luisi, Dr. Paulina VII, 221, 222; VIII, 545, 547; IX, 303
Lutrario, Dr. Alberto VII, 202; VIII, 497, 499, 505, 507
Luxemburg:
budget unit of League of Nations...VIII, 405
compulsory jurisdiction of Permanent Court.....VII, 126
member of —
conference of signatories to Protocol of Signature of Court.....IX, 626
International Labor Organization VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
optional clause of World Court signed IX, 567
declaration.....IX, 642
passports.....VIII, 528
sale of coal and coke by France.....VIII, 235
signatory of protocol of World Court IX, 567
Lyon-Caen, Charles.....VIII, 521

Macao:
opium control and revenue.....VIII, 88
opium traffic in.....VIII, 61
McClatchy, Valentine Stuart.....VIII, 27
McCormick, Medill.....VII, 39
McCoy, Dr. George W VII, 22, 107; VIII, 386, 503
McCracken, John H.....VII, 36
McCreary, James B.....IX, 517
McDonald, James G.....VII, 35
MacDonald, James Ramsay:
arbitration and disarmament, idea of VII, 393, 414; IX, 15, 575
conversations with Premier Herriot VIII, 225–227
letter to French and Belgian premiers on Ruhr occupation.....VIII, 235

PAGE

MacDonald, James Ramsay — Continued.
signatory of London Conference protocol VIII, 237
MacDonald, Sir Murdoch ..... IX, 315
MacDonnell, Mervyn Sorley VII, 282; VIII, 577; IX, 124, 333
Macedonia ..... VIII, 504
MacFadyean, Sir Andrew ..... VIII, 310
McKenzie, Frederick A ..... VIII, 21
McKinley, William, see President of the United States.
MacKintosh, George L ..... IX, 543
McLaren, Walter Wallace ..... VIII, 9
MacLeod, Keith ..... VII, 12, 105; VIII, 382
MacNeill, Ronald J ..... VIII, 467; IX, 238
MacWhite, Michael VIII, 620; IX, 160, 626, 637
Madariaga, Salvador de VII, 121, 400; VIII, 402; IX, 167
Maday, André de ..... VII, 144; VIII, 592
Madero, Francisco I ..... IX, 339, 340, 342
Madsen, Dr. Thorvald VII, 202, 205; VIII, 497, 499, 505, 508
Magaz, Marquis de ... VII, 146, 148; VIII, 464
Magnier, M ..... VIII, 533
Magnusson, Leifur VII, 11, 111, 144; VIII, 391, 593
Magruder, Alexander R. VII, 15, 106, 224; VIII, 384
Mahaim, Eugène ..... VIII, 521
Mahany, Rowland B ..... VII, 20
Mahmoud, Mirza, Khan .... VIII, 128, 130, 135
Maitri, Phya Sudham ..... VIII, 133, 136
Makay, P. J. de ..... IX, 167
"The Making of Australasia . . ." by Thomas Dunbabin ..... VIII, 8
Makino, Baron ..... VII, 102
Malaria ..... VII, 204; VIII, 504
Malaya Opium Committee ..... VIII, 44
"Man, Past and Present" by Augustus Henry Keane ..... VIII, 29
Mandates:
A, B and C mandates ..... VII, 234, 235
Commission, the Permanent VII, 24, 235–236
German position on ..... IX, 151
Japan and the class "C" mandates ... VII, 300
nationality of inhabitants ..... VII, 236
protection of minorities ..... VII, 299
purpose of ..... VII, 234
territories, administration of VIII, 485–493; IX, 246–252
see also League of Nations.
"The Mandates of the Pacific" by George H. Blakeslee ..... VIII, 23
Mandelstam, M ..... IX, 468
"Mankind at the Crossroads" by Edward Murray East ..... VIII, 25
Mann, Charles R ..... VIII, 539
Manteuffel, Baron Otto Theodore ..... IX, 462
Mantoux, Paul Joseph VII, 120; VIII, 401; IX, 166

PAGE

Marburg, Theodore ..... VII, 135, 554
March, Lucien ..... IX, 274
Marchoux, Dr ..... VIII, 504
Marcinowski, Prof ..... VIII, 504
Marfoff, M ..... IX, 203, 205
Margerie, M. de ..... IX, 42
Marinis Stendardo di Ricigliano, Brig. Genl. de ..... VII, 146; VIII, 464, 469
Maritime ports ..... VIII, 526
Markoff, Dr ..... VIII, 504
Markovitch, Dr. Lazare ..... IX, 627, 638
Marriott, Mr ..... VII, 209
Martens, Feodor ..... IX, 462, 465, 468
Martin, Dr. Gustave ..... VIII, 506
Martin, William ..... VII, 143; VIII, 592
Marvin, Francis Sydney ..... VIII, 29
Marx, Chancellor ..... VIII, 233
Mason, James M ..... IX, 492
Massachusetts Federation of Churches .. VII, 317
Massachusetts Peace Society ..... IX, 485
Massachusetts Supreme Court ..... VII, 37
Massamichi, Makino ..... VII, 255
Massigli, R ..... VIII, 237
"The Mastery of the Far East" by Arthur Judson Brown ..... VIII, 21
Mastny, Adalbert ..... VIII, 422; IX, 187, 188
Mataja, Dr ..... IX, 274
Mater, André ..... VIII, 566
Mathenet, Capt. M. N ..... VIII, 402; IX, 167
Mather, Samuel ..... VII, 36
Matsuda, M ... VII, 148; VIII, 421, 467, 620; IX, 187, 188, 238
Matsuyama, S ..... VII, 215; VIII, 403, 511
Matthaei, L. E ..... VIII, 592
Maudslay, A ..... VIII, 566
Maurette, Fernand ..... VIII, 592
Maus, Isidore ..... VIII, 547
Mavrommatis Jerusalem concessions VIII, 371–374
Mavrommatis Palestine Concessions VIII, 356–360
"May Japanese Become Citizens," Valentine Stuart McClatchy and Raymond Leslie Buell ..... VIII, 28
Mayas of Yucatàn ..... IX, 340
Mayos ..... IX, 340
Mayras, Mlle ..... VII, 121
Mediation:
Covenant articles ..... IX, 563
definition of ..... IX, 451
Hague convention, 1907 ..... VII, 460
of disputes ..... IX, 563
policy of United States, 1916 ..... IX, 554
procedure in Arts. VII and VIII, treaty of Paris, Mar. 30, 1856 ..... IX, 461
resolution of Congress of Paris ..... IX, 462
Meeker, Dr. Royal VII, 11, 13, 14, 111, 252; VIII, 391
Meierovics, Z. A ..... IX, 642
Mélas, George V ..... VIII, 237

PAGE
Mellini, E. . . . . VIII, 534
Mello-Franco, Afranio de. . . VII, 553; VIII, 467, 469, 619, 620; IX, 217
Memel, territory of VII, 182–184; VIII, 443–444
Méndez, Don Joaquin . . . . . IX, 536
Mérillon, M. . . . . VIII, 341
Merrill, William Pierson . . . . . VII, 39
Mesopotamia . . . . . VII, 234; VIII, 486
Meston, Lord . . . . . VIII, 22, 404
Methodist Episcopal Church . . . . . VII, 34
Methodist Episcopal Church (South) . . VII, 34
Methorst, Dr. H. W. . . . . VIII, 505; IX, 274
Meuron, Alfred de . . . . . VII, 222; VIII, 547
"The Mexican Revolution and the United States, 1910–1926" by Charles Wilson Hackett . . . . . IX, 339–446
Mexico:
agrarian laws . . . . . IX, 344–347, 376, 403, 413
agrarian problem —
organic law of Sec. I of Art. 27 of Constitution . . . . . IX, 414
origin of . . . . . IX, 360
plank of Madero . . . . . IX, 342
program of Obregón Government . . . IX, 364
reforms, 1910–1915 . . . . . IX, 342
regulations governing the organic law of Art. 27 . . . . . IX, 417
understandings of the American and Mexican Commissioners, 1923 . . . . IX, 413
agreements on bonds for *ejidos* . . . . . IX, 371
aide-mémoire of Secretary Kellogg, Nov. 17, 1925 . . . . . IX, 378
alien land law . . . IX, 363, 376, 382, 403–422
appeal to 1848 treaty . . . . . IX, 487
arbitration —
blockading powers preference . . . . . IX, 468
Pious funds case with United States IX, 468
arbitration settlements . . . . . IX, 476
arbitration treaties —
Brazil, 1909 . . . . . IX, 591
Honduras, 1908 . . . . . IX, 591
index of . . . . . IX, 587–607
Italy, 1907 . . . . . IX, 591
Persia, 1902 . . . . . IX, 590
Salvador, 1893 . . . . . IX, 589
Spain, 1902 . . . . . IX, 590
United States, 1848, 1908 IX, 458, 587, 523
arms of revolution of 1910 . . . . . IX, 347
Art. 14 of petroleum law . . . . . IX, 388, 429
Art. 27 of Constitution of 1917 IX, 372, 407, 413, 414–417, 425
Art. 130 of 1917 Constitution on religious worship . . . . . IX, 444
attitude of United States on jurisdiction over American nationals . . . . . IX, 412
basis of diplomatic *impasse* with United States, 1920–23 . . . . . IX, 351–362
Carranza recognized by United States IX, 346
Celaya, battle of . . . . . IX, 346

PAGE
Mexico — Continued.
churches, nationalization of . . . . . IX, 399, 443
civil code . . . . . IX, 372
claims conventions with United States, 1831, 1843, 1868 . . . IX, 374, 431–439, 486
Columbus, N. M. raid . . . . . IX, 346
communal lands —
size of . . . . . IX, 341
expropriation . . . . . IX, 341
see also *ejidos*.
concessions, laws on . . . . . IX, 427–429
condition of Indians . . . . . IX, 401
"confiscatory" legislation on American property rights . . . . . IX, 379, 384
Congressional action on laws IX, 376, 414, 425
constitutions —
Oct. 24, 1824 . . . . . IX, 440
Aug. 26, 1842, religious provisions . . IX, 441
1857 . . . . . IX, 399
1917– . . . . . IX, 346
agrarian regulation of Apr. 10, 1922 IX, 347
enforcement of agrarian provisions IX, 347
nationalization of subsoil deposits IX, 347, 349–351
provisions on religion IX, 398–400, 440–446
provisions on instruction . . . IX, 443, 444
reform program in Art. 27 . . . . . IX, 346
correspondence with United States IX, 377–395
counter-proposals to treaty of amity with United States . . . . . IX, 353
debt, resumption of payment on . . . . . IX, 375
decree requiring foreigners to renounce national protection when acquiring real property . . . . . IX, 405–407
deportation of religious workers . . . . . IX, 399
diplomatic exchanges with United States, 1922 . . . . . IX, 360–362
educational regulations IX, 398–400, 443–446
IX, 345, 347, 348, 349, 360, 366–371, 413
ejidos
establishment of diplomatic relations with United States . . . . . IX, 361
expropriation of communal lands . . . . . IX, 341
foreign corporations, restrictions on IX, 387, 408–410, 417–422
foreign debt, adjustment of . . . . . IX, 363
foreign influence curbed . . IX, 376, 415, 425
foreigners, treatment of . . . . . IX, 380–383
general claims convention with United States, Sept. 8, 1923 . . . IX, 354, 358, 431
haciendados . . . . . IX, 340, 341
haciendas, size of . . . . . IX, 340, 341
Huerta *coup d'etat* . . . . . IX, 343
Indians —
communal lands
IX, 341, 345, 347, 348, 349, 360, 366–371

PAGE

Mexico — Continued.
despoiled of lands . . . . . IX, 340
number of . . . . . IX, 340
inheritance rights . . . . . IX, 382
Japanese immigration . . . . . VII, 295
Japanese residents in . . . . . VII, 283
Lamont-De la Huerta agreement, June 16, 1922 . . . . . IX, 363
land —
controversy with United States . . . . IX, 391
decree of Carranza, Jan. 6, 1915, text of IX, 403–405
law, Art. 3 . . . . . IX, 391, 403
restrictions on foreigners . . . . . IX, 391, 405
value of expropriated . . . . . IX, 368
law regulating Art. 27 of the Constitution in the matter of petroleum, text of IX, 425
laws of 1884, 1892 and 1909 on subsoil deposits . . . . . IX, 372
laws of reform . . . . . IX, 442
ley Juarez . . . . . IX, 441
ley Lerdo . . . . . IX, 441
Mayas of Yucatán . . . . . IX, 340
Mayos . . . . . IX, 340
middle class . . . . . IX, 341
Morelos, population of . . . . . IX, 340
Napoleonic Code . . . . . IX, 372
National Agrarian Commission . . . . . IX, 345
nationalization of churches . . . . . IX, 400, 445
nationalization of subsoil deposits IX, 371–373, 407, 413, 414, 417, 425
nonmember of League of Nations . . VII, 105; VIII, 381, 382, 392; IX, 157
nonsignatory of opium convention of 1912 VIII, 72
notes —
from Minister Pani, Feb. 9, 1922 . . . IX, 355
from Minister Pani to Mr. Summerlin, May 4, 1922 . . . . . IX, 357
of Minister Pani to Secretary Hughes, Mar. 31, 1923 . . . . . IX, 362
from Minister Sáenz to Secretary Kellogg, Jan. 20, 1926 . . . . . IX, 384
from Minister Sáenz to Secretary Kellogg, Feb. 12, 1926 . . . . . IX, 386
from minister to Secretary Kellogg, Dec. 5, 1925 . . . . . IX, 380
of Mexican commissioners to U. S. on indemnification . . . . . IX, 368
of Minister to Secretary Kellogg, Nov. 27, 1925 . . . . . IX, 379
of Mr. Summerlin to Señor Pani, Apr. 20, 1922 . . . . . IX, 357
of Secretary Kellogg, Nov. 17, 1925 IX, 378
of Secretary Kellogg on petroleum law, Jan. 8, 1926 . . . . . IX, 382
of Secretary Kellogg, Jan. 28, 1926 . IX, 386
objections to treaty of amity proposed by United States . . . . . IX, 356

PAGE

Mexico — Continued.
occupation of Vera Cruz by United States IX, 486, 487
oil properties, laws governing . . . . . IX, 350
see also petroleum.
outstanding facts in controversy with United States . . . . . IX, 395–398
overthrow of Huerta . . . . . IX, 343
peons . . . . . IX, 341
Pershing punitive expedition . . . . . IX, 346
petroleum law —
presidential regulations on . . . . IX, 397, 417
problem . . IX, 349, 376, 415, 417, 422, 425
promulgation of . . . . . IX, 382, 425
status in May, 1926 . . . . . IX, 396–398
understandings of American-Mexican commissioners, 1923 . . . . . IX, 422
petroleum production in 1922 . . . . . IX, 363
percentage Mexican owned . . . . . IX, 363
plan of Iguala . . . . . IX, 440
policy of Harding Administration . . . . IX, 353
political conditions in 1910 . . . . . IX, 339
political constitution of the United States of, Art. 27 . . . . . IX, 407–412
population density . . . . . VII, 282
presidential decrees . . . . . IX, 376, 414, 417
presidential succession . . . . . IX, 339
proposals to United States on recognition IX, 354
regulations, issuance of . . . . . IX, 385, 417
religious instruction forbidden in schools IX, 400, 443
religious policy, development of . . . . . IX, 440
religious regulations . . . . IX, 398–400, 440–446
revolution of 1910 . . . . . IX, 339–342
right of appeal of foreigners to their governments . . . . . IX, 385, 412
Santa Ysabel massacre . . . . . IX, 346
schools . . . . . IX, 400, 443
seizure of Vera Cruz by United States IX, 343
separation of church and state . . . IX, 442, 444
settlement of claims with United States IX, 578
socio-economic revolution of 1910 IX, 339–342
special claims convention with United States . . . . . IX, 354, 358, 436
statement of Minister Sáenz, Jan. 19, 1926 IX, 384
status of foreign rights . . . . . IX, 359
subsoil deposits —
positive acts . . . . . IX, 373
property of Spanish Crown . . . . . IX, 349
regulations on . . . . . IX, 376, 408, 422, 425
Supreme Court decision on nonretroactivity of Art. 27 on . . . . . IX, 359, 363
understandings of American-Mexican commissioners . . . . . IX, 422
Supreme Court decisions IX, 359, 363, 372, 388

PAGE

Mexico — Continued.
treaty of Guadalupe Hidalgo, Feb. 2, 1848 IX, 485–487
treaty proposed by United States, May 27, 1921 ..... IX, 351
United States-Mexican commission IX, 348, 365–375
Yaquis ..... IX, 340
Meyer, W. S ..... VIII, 127, 130
"The Migration of Races" ..... VIII, 25
Mikoff, Dimitri ..... VIII, 620; IX, 625
Miles, Basil ..... VII, 15, 106; VIII, 385
Milhaud, Edgar ..... VII, 143; VIII, 592
Military information, exchange of ..... VII, 150
Military, Naval and Air Questions, The Permanent Advisory Commission on VII, 146
Millard, Thomas Franklin F ..... VIII, 16
Miller, David Hunter ..... VII, 12, 391, 488
Miller, Herbert A ..... VIII, 30
Miller, H. H ..... VIII, 12
Millerand, Alexandre ..... VIII, 224; IX, 542
Millet, J. B ..... VII, 317
Millikan, Robert Andrews ... VII, 16, 108, 226; VIII, 387, 536, 539, 542; IX, 295
Mills, Caris E ..... VIII, 389, 550
Mills, Roger I ..... IX, 507
Mimbela, Dr. P ..... VII, 202; VIII, 497, 507
Minorities, protection of:
German settlers in Poland .... VII, 134–135
procedure established by Council of League of Nations VII, 238–239; VIII, 408
rights of in Turkey ..... VII, 576
treaties ..... VII, 237; VIII, 348, 351
under League system ..... IX, 316–326
Miranda, A. A. Sanches de ..... VIII, 136
Mistral, Mlle. Gabriel ..... IX, 297
Mitchell, Mrs. Leroy B ..... VIII, 391
Mitilineu, C. M ..... VIII, 136
Mixed Arbitral Tribunal ..... IX, 127
Mixed Commission for the Exchange of Populations VIII, 366, 447, 448; IX, 320
"Modern China", Sih-Gung Cheng .... VIII, 11
"Modern Democracies" by James Bryce VIII, 8
"Modern Japan" by Amos Shartle and Susanne W. Hershey ..... VIII, 10
Molloff, Wl ..... IX, 625, 637
Monaco ..... VIII, 381, 382, 392
Money, Hernando D ..... IX, 517
Monroe, Capt. F ..... VII, 121
Monroe doctrine ..... IX, 531, 538
Montagut, Capt. J ..... VII, 147; VIII, 464
Montarroyos, M ..... IX, 331
Montenach, Baronne de ..... VII, 221
Montenegro, arbitration settlements ... IX, 476
Monteros, Carlos Espinosa de los .. VII, 147, 231
Montesinos, Ramirez ..... IX, 625
Monthly Bulletin of Statistics ..... VIII, 510

PAGE

Monthly Record of Migration ..... VIII, 593
Montoussis, Dr ..... VIII, 504
Moon, Parker Thomas ..... VIII, 18
Moore, George Foot ..... VIII, 32
Moore, John Bassett, American judge of Permanent Court of International Justice ... VII, 8, 24, 86, 90, 109, 127; VIII, 388, 582; IX, 83, 532
Moore, John M ..... VII, 34
Moore, Tom ..... VIII, 590
Moorhead, Mrs. John J ..... VII, 13
Mora, J. M ..... IX, 417
Morales, Dr. Eusebio A ..... IX, 626, 638
Morawski, Gaëtan D ..... VIII, 620
Morgan, John T.:
minority report on 1904 arbitration treaties ..... IX, 507, 513, 517
Morgan, Mrs. Raymond ..... VII, 34
Morgan, Ruth ..... VII, 34
Morgenthau, Henry VII, 20, 110, 572; VIII, 389, 459
Morocco:
arbitration settlements ..... IX, 476
British-French dispute over nationality decrees ..... VII, 130–131; VIII, 339
Morones, Luis ..... IX, 398
Morphine, see Opium.
Morrisson, Mrs. James ..... VII, 35
Moser, Karl ..... IX, 171
Moses, George H ..... VII, 39
Motono, M ..... IX, 468
Motta, Guiseppe ..... IX, 644
Mouncey, George ..... VIII, 341
Mowinckel, M ..... IX, 160
Mrozowski, J ..... VIII, 276, 291
Muggia, Attilio ..... IX, 171
Müller, F. von ..... VIII, 127, 130, 133, 135
Muller, Lauro S ..... IX, 544
Müller, W. G. Max ..... VIII, 127, 130, 133
Muravev, M ..... IX, 468
Murray, Gilbert A ... VII, 226; VIII, 536; IX, 295, 297
Muscat, arbitration settlements ..... IX, 476
Mussolini, Benito ..... VII, 177; VIII, 433
"Must We Fight Japan?" by Walter B. Pitkin ..... VIII, 16
Mutual assistance, draft treaty of ... VII, 155–162, 414, 480–487, 492–493; IX, 14
Myttenaere, Dr. Ferd. De ..... VIII, 189, 194

Nagoaka, N ..... VIII, 531
Nansen, Dr. Fridtjof, High Commissioner for Relief of Refugees .. VII, 19; VIII, 457; IX, 18, 160, 313, 314, 315, 542, 643
Naón, Rómulo S ..... IX, 542
Narcotic Drug Control Commission of New York ..... VIII, 39
Narcotics, see Opium.
Natal, arbitration settlements ..... IX, 476
National Association of Credit Men .... VII, 35

PAGE

National Catholic Welfare Council.....VII, 20
National Christian Council of India....VIII, 43
National Congress of Mothers and Parent Teachers' Associations.....VII, 35
National Council of Jewish Women.....VII, 35
National Council of Women.....VII, 35
"National Defense and Limiting of Naval Armament"..VIII, 34
National Federation of Business and Professional Women.....VII, 35
National League of Women Voters.....VII, 34
National Research Council.....VII, 108
National Service Star Legion.....VII, 34
"The Native Races of the Empire" by Sir Godfrey Yeatman Lagden.....VIII, 8
Nationality of vessels employed in inland navigation.....VIII, 419
Nauru.....VII, 235; VIII, 489
Naval, see Permanent Advisory Commission on Military, Naval and Air Questions.
Navigable waterways, régime of.....VIII, 525
Near East Relief.....VII, 20
Neculcea, Eugène .VII, 215, 218; VIII, 511; IX, 274
Nederbragt, Dr.....VIII, 404
Negulesco, Démètre....VIII, 582; IX, 627, 638
Nejd, Sultanate of:
  history of.....IX, 157
  nonmember of League of Nations.....IX, 157
Nepal.....IX, 456
Netherlands:
  advisory opinion on workers' delegates to International Labor Conference VII, 130; VIII, 335
  arbitration —
    blockading powers preference.....IX, 468
    frontiers on Island of Timor.....IX, 469
    sovereignty of Island of Palmas....IX, 469
  arbitration settlements.....IX, 476
  arbitration treaties —
    China, 1915.....IX, 594
    Denmark, 1904.....IX, 590
    France, 1904.....IX, 590
    Germany, 1926.....IX, 600
    Great Britain, 1905.....IX, 591
    Italy, 1909.....IX, 592
    Portugal, 1894, 1904.....IX, 589, 590
    Switzerland, 1925.....IX, 599
    United States, 1908.....IX, 523, 591
  budget unit of League of Nations....VIII, 405
  commissions of inquiry —
    loss of S.S. *Tubantia*.....IX, 470
  Hague Convention, 1912, agent for execution of.....VIII, 142
  member —
    Advisory Committee on Traffic in Opium.....VII, 195
    conference of signatories to Protocol of Signature of Court.....IX, 626
    European Health Conference.....VII, 204

PAGE

Netherlands — Continued.
    First Opium Conference.....VIII, 169
    International Labor Organization VII, 138; VIII, 585
    League of Nations VII, 104; VIII, 380; IX, 142
    Permanent Court of International Justice.....VIII, 581
    Second Opium Conference.....VIII, 192
  opium —
    member of antismoking conference VIII, 87
    revenue from East Indies.....VIII, 63
    statement on policy in East Indies..VIII, 65
    system of control.....VIII, 60
  opposition to treaty of guaranty for reparation.....VIII, 226
  optional clause of World Court signed IX, 567
    declaration.....IX, 643
  passports.....VIII, 528
  request to League on duties under Opium Convention.....VII, 17
  signatory of protocol of World Court..IX, 567
  statement of M. Loudon at Opium Conference.....VIII, 111–112
  treaty for advancement of peace, not in force.....IX, 545
  use of coca as hedges.....VIII, 110
Netherlands General Confederation of Trades Unions.....VIII, 335
Neuilly, treaty of, interpretation of reparation clauses judgment of Court VIII, 363, 369, 475
Neutral states.....VII, 102
Neves, Col. Andrade.....VII, 146
Neville, Edwin L..VII, 17, 18, 106, 198; VIII, 78, 85, 100, 384, 553
"The New Constitution of India" by Sir Courtenay P. Ilbert and Rt. Hon. Lord Meston.....VIII, 22
"The New Map of Asia" by Herbert Adams Gibbons.....VIII, 15
"The New Pacific" by Hubert Howe Bancroft.....VIII, 7
"The New World of Labor" by George Sherwood Eddy.....VIII, 23
New York Council to Prevent War.....VII, 35
New York Peace Society.....IX, 485, 487
New York State Bar Association.....VII, 35
New Zealand:
  agreement with Germany, Aug. 30, 1924 VIII, 257–261
  Aliens Act of 1908.....VII, 340
  arbitration treaties.....IX, 605
  budget unit of League of Nations...VIII, 405
  dictation test for Japanese immigrants VII, 341
  exclusion of Japanese.....VII, 296
  immigration.....VII, 340
  mandate for Samoa.....VIII, 489

PAGE

New Zealand — Continued.
member of —
conference of signatories to Protocol of Signature to Court.....IX, 626
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
naturalization.....VII, 340
population density.....VII, 282
reparation percentage under Experts' plan.....VIII, 305
signatory of protocol of World Court..IX, 567
signed protocol of London Conference VIII, 236–237
Newfoundland, reparation percentage under Experts' plan.....VIII, 305
Newman, Sir George.....VIII, 505
Ney, Dr. Marcel.....VIII, 508
Niblack, Vice-Adml. Albert P., member of directing committee International Hydrographic Bureau VII, 14, 106, 245; VIII, 384
Nicaragua:
arbitration settlements.....IX, 476
arbitration treaties —
Argentina, 1923.....IX, 596
Belgium, 1906.....IX, 591
Brazil, 1923.....IX, 596
Chile, 1923.....IX, 596
Colombia, 1923.....IX, 596
Costa Rica, 1923.....IX, 596
Cuba, 1923.....IX, 596
Dominican Republic, 1923.....IX, 596
Ecuador, 1923.....IX, 596
Guatemala, 1874, 1923.....IX, 588, 596
Haiti, 1923.....IX, 596
Honduras, 1923.....IX, 596
index of.....IX, 587–607
Panama, 1923.....IX, 596
Paraguay, 1923.....IX, 596
Portugal, 1909.....IX, 592
Salvador, 1883, 1923.....IX, 588, 506
Spain, 1904.....IX, 590
United States, 1923.....IX, 596
Uruguay, 1923.....IX, 596
Venezuela, 1923.....IX, 596
Bryan-Chamorro treaty.....IX, 548
budget unit of League of Nations....VIII, 405
Central American Court of Justice....IX, 546
Gulf of Fonseca condominium.....IX, 548
Honduran exiles in.....IX, 547
member of —
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 330; IX, 142
Second Opium Conference.....VIII, 192

PAGE

Nicaragua — Continued.
permanent delegate to League VIII, 621; IX, 156
treaty for advancement of peace, not in force.....IX, 545
treaty with United States giving canal rights.....IX, 547
U. S. naval station on Fonseca Bay...IX, 548
Niceforo, Dr. Alfredo.....VIII, 505, 507
Niemeyer, Sir Otto E. VII, 215; VIII, 319, 511, 514, 521
Ninchitch, M.....IX, 160
Nishizaki, Kotaro.....VIII, 128, 130
Nitobe, Inazo.....VII, 120; VIII, 401; IX, 166
Nocht, Dr. Bernard VII, 202; VIII, 497, 503, 504, 506, 507
Nogara, M.....VIII, 310, 324
Nolde, Baron.....IX, 544
Noli, F. S.....VII, 553; VIII, 619
Nollet, Genl.....VIII, 226
North America, Japanese residents in..VII, 283
Northern Baptist Convention.....VII, 34
Norway:
arbitration —
blockading powers preference.....IX, 468
claims against United States VII, 48–49; IX, 469
maritime frontier.....IX, 468
arbitration treaties —
Brazil, 1909.....IX, 592
Denmark, 1908, 1924, 1926 IX, 591, 597, 599
Finland, 1924, 1926.....IX, 597, 600
France, 1904.....IX, 590
Great Britain, 1904.....IX, 590
index of.....IX, 587–607
Italy, 1910.....IX, 592
Portugal, 1908.....IX, 591
Russia, 1904.....IX, 590
Siam, 1925.....IX, 598
Spain, 1905.....IX, 590
Sweden, 1905, 1924, 1925 IX, 591, 597, 599
Switzerland, 1904, 1925.....IX, 590, 598
United States, 1908, 1914 IX, 523, 591, 593
budget unit of League of Nations...VIII, 405
commission of inquiry —
treaty with United States, 1914....IX, 543
conciliation commissions —
with Denmark.....VIII, 413
with Finland.....VIII, 413
with Sweden.....VIII, 413
conciliatory system.....IX, 572
conference on legal aid suggested.....VII, 16
health service, international cooperation VII, 203
member of —
conference of signatories to Protocol of Signature of Court.....IX, 626
European Health Conference.....VII, 203
International Labor Organization VII, 138; VIII, 585

PAGE

Norway — Continued.
League of Nations
VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
optional clause of World Court signed
IX, 567
declaration.....IX, 643
signatory of protocol of World Court..IX, 567
Norway and Sweden:
arbitration settlements.....IX, 476
Nygren, Col. Oscar E.....VII, 147; VIII, 464
Nyholm, Didrik Galtrup Gjedde
VII, 86, 127; VIII, 582

Obregón, Álvaro.....IX, 346; 385
O'Brien, Robert Lincoln.....IX, 517
Obscene publications
VII, 15, 223–224; VIII, 550
Oceania, Japanese residents in.....VII, 283
Oceanographic Review.....VII, 244
Oda, Yorozu .....VII, 86, 127; VIII, 582
Oder river system .....VIII, 527
Œcumenical Patriarchate of Constantinople .....VIII, 368
Oersted, M. .....VIII, 467; IX, 238
Oeser, Herr.....VIII, 309, 326
Office international d'Hygiène publique
VII, 199, 200, 201, 202; VIII, 179, 495
Official Bulletin.....VIII, 593
Ogasawara, Lieut. Col.....VIII, 464
Ogura, Capt .....VII, 146
"Old World Traits Transplanted" by Robert Ezra Park and Herbert A. Miller .....VIII, 30
Oldenburg, Andreas d'
VIII, 621; IX, 625, 637, 641
Oldham, J. H .....VIII, 28
Olds, Col. Robert Edwin.....VIII, 389, 566
Olivetti, Gino.....VIII, 590
Olivier, Sydney .....VIII, 23
Olney, Richard.....IX, 501
Ooms, N .....IX, 626
"The Open Door Doctrine in Relation to China" by Mingchien Joshua Bau
VIII, 23

Opium:
Advisory Committee on Traffic in —
American proposals at 5th session
VIII, 79–83, 114
meetings .....VII, 195
work ..... VII, 195–196; VIII, 552–555; IX, 306–311
agreement on control and use of....VIII, 417
agreement on smoking .....VIII, 116
American Commission for investigation in The Philippines .....VIII, 41
amount on sale for consumption ...VIII, 155
"An Appeal to My Colleagues" by Bishop C. H. Brent.....VIII, 159–165

PAGE

Opium — Continued.
anti-opium propaganda.....VIII, 90–91
arbitration of disputes under convention
VIII, 118–119, 187
attitude of Serb-Croat-Slovene State
VIII, 108–109
bibliography on smoking.....VIII, 19
bonded warehouses.....VIII, 145
"Canton Road Smuggling Case"...VIII, 69
Central Board —
constitution of.....VIII, 149
control of amounts required.....VIII, 152
duties of.....VIII, 150
expenses of.....VIII, 150
Ceylon, policy of.....VIII, 41
coca leaves, control of.....VIII, 177
"cocaine," definition of.....VIII, 146
codeine not included in convention of 1925.....VIII, 116
"Committee of Sixteen".....VIII, 98–99
conditions in China.....VIII, 153
conferences —
adjournment on Dec. 16, 1924 ...VIII, 106
agenda.....VIII, 103, 105
antismoking conference....VIII, 83–85, 87
appropriation of U. S. for American delegation.....VIII, 101
Assembly resolutions.....VII, 197–198
Cecil proposal.....VIII, 94–98
control of production of raw opium, protocol on.....VIII, 99
criticism of Bishop Charles H. Brent
VIII, 95
draft agreement of British delegate VIII, 92
failure of American proposals
VIII, 114–115
of July, 1913.....VIII, 56
of June, 1914.....VIII, 56
opposition of states to American motion
VIII, 94
preparatory committee.....VII, 198
proposed.....VIII, 82–85
protocol on smoking.....VIII, 99
reports of subcommittees.....VIII, 113
results of.....VIII, 116
suggestions of the United States
VIII, 144–152
suppression of smoking.....VIII, 83–93
see also First Conference, Second Conference.
control of international trade
VIII, 117, 177, 180
control of manufacture and trade
VIII, 113, 178
control of production.....VIII, 75–76
convention of 1912 —
amendment of Art. I.....VIII, 113
instructions of British delegates
VIII, 44–45
ratifications .....VIII, 408

PAGE

Opium — Continued.
signatories.....VIII, 71
convention of Feb. 19, 1925.....VIII, 381, 558
hashish.....VIII, 116
settlement of disputes arising.....VIII, 118
convention on smoking.....VIII, 99, 169–172
definitions.....VIII, 176
delegates from United States at Fifth Session.....VII, 106
documents of the First Conference, Feb. 11, 1925 —
agreement.....VIII, 169–172
final act.....VIII, 174–175
protocol.....VIII, 172–174
documents of the Second Opium Conference, Feb. 19, 1925 —
convention.....VIII, 176–190
final act.....VIII, 191–194
protocol.....VIII, 190–191
drug addiction.....VIII, 39
drug manufacturing powers.....VIII, 67
eating in India.....VIII, 107
effect on infantile mortality rate in India VIII, 43
estimates of requirements furnished..VIII, 86
export authorization.....VIII, 180
export control.....VIII, 85
export license.....VIII, 117, 145, 147
farms.....VIII, 92, 155
final act of Second Conference.....VIII, 116
First Conference —
American motion.....VIII, 93
discussed by Bishop Brent...VIII, 160–161
documents of.....VIII, 169–174
free ports and free zones.....VIII, 151
Geneva agreements of 1925....VIII, 116–119
Government of India Act of 1919 on control.....VIII, 45
Hague convention of 1912....VIII, 54–57, 67
collection of information by Netherlands.....VIII, 56
interpreted by United States.....VIII, 79
provisions of.....VIII, 54–55
ratification.....VIII, 56–57
"heroin," definition of.....VIII, 147
history.....VII, 194; VIII, 552
illegal possession, penal offense for...VIII, 149
illegal production in China.....VIII, 154
"illegitimacy" of use.....VIII, 42
illicit consumption.....VIII, 66
illicit traffic.....VIII, 68
import certificates VIII, 72–75, 86, 147, 153, 180, 553
importation above quantity estimated VIII, 149
importation into Macao.....VIII, 68
India —
National Congress resolution on governmental policy.....VIII, 43–44
opposition to policy on.....VIII, 44

PAGE

Opium — Continued.
Indian hemp, control of.....VIII, 179
international commission.....VIII, 552
interpretation of Hague convention of 1912.....VIII, 79
League of Nations action on VIII, 552–560; IX, 306–312
"legitimate".....VIII, 140
legitimate requirements of the world..VIII, 76
letter from the delegation of the United States to the president of the Second Opium Conference.....VIII, 166
licensing system.....VIII, 92
limitation of —
drug manufacture.....VIII, 82–83
production for medical and scientific purposes.....VIII, 114, 178
smoking.....VIII, 82
Macao, traffic in.....VIII, 61
Malaya Committee.....VIII, 44
medical and scientific uses of.....VIII, 43
"medicinal," definition of.....VIII, 146
morphine content of —
Chinese.....VIII, 47
definition of.....VIII, 146
Indian.....VIII, 47
Persian.....VIII, 47
Turkish.....VIII, 47
National Christian Council of India investigation.....VIII, 43
obstacles to limitation of production VIII, 108
officinal preparations.....VIII, 179
penalties for illicit traffic.....VIII, 156
Permanent Control Board VIII, 117, 183–186, 559
permit for manufacture of.....VIII, 147
policy in Formosa and Burma...VIII, 58–59
policy of United States.....VIII, 78
practice of eating raw.....VIII, 42
"prepared".....VIII, 40
definition of.....VIII, 146
price as factor of control.....VIII, 61–62
production —
Afghanistan, 1922.....VIII, 47
amount estimated.....VIII, 47
China, 1922.....VIII, 47
domestic question.....VIII, 106
Greece, 1922.....VIII, 47
India, 1922.....VIII, 47
Persia, 1922.....VIII, 47
Serb-Croat-Slovene State, 1922....VIII, 47
Turkestan, 1922.....VIII, 47
Turkey, 1922.....VIII, 47
various countries.....VIII, 47–53
prohibition in postal convention of 1920 VIII, 74
prophylactic against malaria.....VIII, 42
protocol of second conference, Feb. 19, 1925.....VIII, 560

PAGE

Opium — Continued.
protocol on putting International Opium Convention, 1912, into operation VIII, 137
questionnaire ..... VII, 196
ratification of 1912 Convention ..... VIII, 71
ratification of Hague convention with treaty of Versailles ..... VIII, 57
rationing ..... VIII, 66
raw, definition of ..... VIII, 144
registration and licensing ..... VIII, 155
relation to labor question ..... VIII, 62–63
report on Indian use by International Missionary Council, 1924 ..... VIII, 42
reports on consumption .... VIII, 78, 149, 182
reservations of states ..... VIII, 111
resolutions —
of Fifth Session of Advisory Committee VII, 196–197; VIII, 40
of Jan. 24, 1925, on formation of Committee ..... VIII, 98
of U. S. Congress, Mar. 2, 1923 .... VIII, 78
uses of opium ..... VIII, 81
see League of Nations.
restriction to medical use ..... VIII, 44
retail trade on prepared ..... VIII, 155
revenue from ..... VIII, 63
scored by House of Commons ..... VIII, 43
Royal Commission for investigation of in India ..... VIII, 43
Russian Government refuses to participate in Second Conference ..... VIII, 100
Second Conference —
agenda ..... VIII, 101
closing address of ..... VIII, 115
committees ..... VIII, 101
limitation of production and manufacture ..... VIII, 100–116
members ..... VIII, 100
organization of ..... VIII, 101–102
subcommittees and purpose of .... VIII, 102
seizures reported ..... VIII, 67
sentiment against ..... VIII, 42–43
Shanghai commission of 1909 ..... VIII, 54
smoking —
among Chinese laborers ..... VIII, 40
countries where practiced ..... VIII, 40–46
extent of habit ..... VIII, 67, 155
final act on the application in the Far East of Convention of 1912 VIII, 174–175
measures proposed ..... VIII, 84–85
of prepared prohibited ..... VIII, 57
statement of Sir David J. Galloway VIII, 44
suppression of ..... VIII, 41, 83–85
smuggling —
from China ..... VIII, 95
Hongkong ..... VIII, 66
import certificate plan ..... VIII, 74

PAGE

Opium — Continued.
measures proposed for suppression VIII, 71–76
Philippines, problem in ..... VIII, 65
relation to consumption ..... VIII, 66
Straits Settlements, use of in ..... VIII, 41
strengthening of 1912 convention ... VIII, 116
suggestions of the United States VIII, 144–152
supervision of free ports ..... VIII, 117
suppression of —
heroin ..... VIII, 156
smoking ..... VIII, 57–64, 99, 117
traffic ..... VIII, 153
transit of ..... VIII, 91–93
transshipment prohibited ..... VIII, 151
use in Shanghai forbidden ..... VIII, 68
use of in India ..... VIII, 40
uses of ..... VIII, 39–46
Versailles, provisions of ..... VIII, 107
withdrawal of United States from Second Conference ..... VIII, 99, 111–114
statement of M. Loudon ..... VIII, 111–112
world's needs ..... VIII, 153, 554
"Opium, International Conferences by," Raymond Leslie Buell ..... VIII, 39–191
Oppermann, M ..... VIII, 532
Organization for Communications and Transit, see League of Nations.
Orlando, Vittorio E ..... VII, 102
Orlov, Count Alexis ..... IX, 462
Orth, Godlove S ..... IX, 495
Orts, Pierre ..... VII, 235; VIII, 490
O'Shaughnessy, Nelson ..... IX, 486, 487
Osorio, Fernando de ..... VIII, 135
Ostertag, M ..... IX, 468
Osusky, Stefan VIII, 276, 291, 404; IX, 627, 638
Otlet, Paul ..... VIII, 541
Ottolenghi, Dr. Donato VII, 202; VIII, 497, 504, 505
Ottoman Empire, see Turkey.
Ouang-Hang ..... VII, 208; VIII, 524, 533
Oudegeest, Jan ..... VII, 148; VIII, 467, 590; IX, 238
Outlawry of war ..... VII, 393, 518–519
Overlach, Theodore W ..... VIII, 19
Owen, Robert L ..... VII, 39

Pacific, The:
commercial and industrial problems .. VIII, 22
naval and strategic problems ..... VIII, 33
peoples of the ..... VIII, 7
political relations ..... VIII, 14
problems of imperialism ..... VIII, 18
religious and cultural contacts in ..... VIII, 31
"The Pacific, Its Past and Future" by Guy Hardy Scholefield ..... VIII, 7
Pacific settlement of international disputes:
advantages of Permanent Court of International Justice ..... IX, 566

PAGE

Pacific settlement of international disputes — Continued.
bilateral compromisory clauses.....IX, 581
bilateral treaties.....IX, 581
collective general agreements.....IX, 581
convention of conference of Central American states.....IX, 551, 552
disputes left to Holy See.....IX, 457
domestic jurisdiction.....IX, 558
forms of.....IX, 451
League of Nations covenant.....IX, 556
multilateral treaties.....IX, 581, 582
practice of.....IX, 577
principles of.....IX, 457
Protocol for the..VIII, 344, 609–619; IX, 34
see also Arbitration, and League of Nations.
"The Pacific Triangle" by Sydney Greenbie VIII, 7
Pacificism, definition of.....VII, 44
Padgett, Lemuel E.....IX, 553
Painlevé, Paul.....IX, 34, 159, 295
Palacios, Emilio de VIII, 194; IX, 160, 234, 625
Palacios, Leopoldo.....VIII, 490
Palestine, mandate for VII, 234, 589; VIII, 371, 486
Palma Castiglione, G. E. D. di.....VII, 143
Palmas, Island of.....IX, 469
Palmer, Albert W.....VIII, 13
Palmer, John L..VII, 121; VIII, 402; IX, 167
Palmerston, Lord.....IX, 460
Pams, Jules.....IX, 315
Panama:
arbitration treaties —
Argentina, 1923.....IX, 596
Brazil, 1909, 1923.....IX, 591, 596
Chile, 1923.....IX, 596
Colombia, 1923.....IX, 596
Cuba, 1923.....IX, 596
Dominican Republic, 1923.....IX, 596
Ecuador, 1923.....IX, 596
Guatemala, 1923.....IX, 596
Haiti, 1923.....IX, 596
Honduras, 1923.....IX, 596
Nicaragua, 1923.....IX, 596
Paraguay, 1923.....IX, 596
Portugal, 1914.....IX, 593
Spain, 1912.....IX, 593
United States, 1923.....IX, 596
Uruguay, 1923.....IX, 596
Venezuela, 1923.....IX, 596
budget unit of League of Nations...VIII, 405
compulsory jurisdiction of Permanent Court.....VII, 126
immigration from Asia restricted.....VII, 332
Japanese residents in.....VII, 283
member of —
conference of signatories to Protocol of Signature of Court.....IX, 626
International Labor Organization VII, 138; VIII, 585

PAGE

Panama — Continued.
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
optional clause of World Court signed IX, 567
declaration.....IX, 643
signatory of protocol of World Court..IX, 567
treaty for advancement of peace, not in force.....IX, 545
Pan American Congress, Santiago.....VII, 154
Pan-American Institute of International Law.....VIII, 205
Pani, Alberto J.:
review of Mexican-American situation, 1923...IX, 349, 354, 355, 362–364, 439
Paraguay:
arbitration settlements.....IX, 476
arbitration treaties —
Argentina, 1876, 1899, 1923 IX, 588, 589, 596
Brazil, 1911, 1923.....IX, 592, 596
Chile, 1923.....IX, 596
Colombia, 1923.....IX, 596
Cuba, 1923.....IX, 596
Dominican Republic, 1923.....IX, 596
Ecuador, 1923.....IX, 596
Guatemala, 1923.....IX, 596
Haiti, 1923.....IX, 596
Honduras, 1923.....IX, 596
Italy, 1911.....IX, 592
Nicaragua, 1923.....IX, 596
Panama, 1923.....IX, 596
Spain, 1915.....IX, 594
United States, 1909, 1914, 1923 IX, 523, 594, 596
Uruguay, 1883, 1918, 1923 IX, 588, 595, 596
Venezuela, 1923.....IX, 596
budget unit of League of Nations...VIII, 406
commission of inquiry —
treaty with United States, 1914....IX, 543
immigration of yellow and black races prohibited.....VII, 332
member of —
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
nonsignatory of 1912 convention on opium.....VIII, 72
signatory of protocol of World Court..IX, 567
Paris Congress...VII, 524–525; IX, 459, 460, 461, 462
Paris, Declaration of.....IX, 461
Park, Robert Ezra.....VIII, 30
Parker, Edwin B.....IX, 580
Parmentier, Jean.....VII, 215; VIII, 309, 511

PAGE

Parmoor, Lord ..... IX, 198
Parr, Sir Christopher James ..... IX, 626, 638
Parra-Perez, Caracciolo
VIII, 404; IX, 234, 627, 638
Passports, see League of Nations Communications and Transit.
Pasteur Institute ..... VII, 205
Pasvolsky, Leo ..... VIII, 17
Paul-Boncour, Jean ..... VII, 393; VIII, 467; IX, 183, 184, 238
Paulis, Col ..... VIII, 450
Paulucci de Calboli, Marquis ..... VII, 221
Pauncefote, Sir Julian .. IX, 465, 466, 500, 503
Payne, John Barton .... IX, 348, 365, 431, 435
Peace Conference, Preliminary:
adoption of Covenant of League of Nations ..... VII, 102
American draft of League of Nations .. IX, 556
British draft of League of Nations .... IX, 556
resolution of January 25, 1919 ..... VII, 101
Peace movement ..... IX, 459, 485
Peace treaties, relation to League of Nations
VII, 230–233
Pearl, Raymond ..... VIII, 386, 508
Peet, William Wheelock ..... VIII, 549
Pellet, Marcellin ..... VIII, 133, 135
Peltzer, Ferdinand ..... VIII, 189, 194
Penn, William ..... VII, 77
"The People of China" by J. W. Robertson Scott ..... VIII, 10
"The People of the Philippines" by Frank C. Laubach ..... VIII, 12
"Peoples and Problems of India" by Sir Thomas W. Holderness ..... VIII, 13
Pepper, George Wharton:
remarks at hearing of subcommittee on Foreign Relations on Court of International Justice ..... VII, 40–41
Peralta, Manuel M. de ..... VIII, 133; IX, 640
Peretti de la Rocca, M ..... VIII, 225
Pereyra, Carlos ..... VIII, 135
Perigord, Paul ..... VII, 16, 108; VIII, 387
Perkins, Thomas Nelson ..... VIII, 307
Permanent Advisory Commission on Armaments:
duties ..... VII, 147
meetings ..... VII, 147; VIII, 463–465
personnel ..... VII, 146
Permanent Commission of Inquiry ..... IX, 540
Permanent Conciliation Commission ... IX, 28
Permanent Court of Arbitration, see Arbitration, Permanent Court of.
Permanent Court of International Justice, see Court of International Justice, the Permanent.
Perry, Commodore M. C ..... VII, 281
Persia:
arbitration settlements ..... IX, 476
arbitration treaties —
Afghanistan, 1921 ..... IX, 596

PAGE

Persia — Continued.
Mexico, 1902 ..... IX, 590
Turkey, 1926 ..... IX, 600
budget unit of League of Nations ... VIII, 406
cultivation of poppy ..... VIII, 139
effort to limit opium ..... VIII, 109
guaranties for loan ..... VIII, 110
member of —
conference of signatories to Protocol of Signature of Court ..... IX, 626
International Labor Organization
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice ..... VIII, 581
Second Opium Conference ..... VIII, 192
nonsignatory of opium convention of 1912
VIII, 72
opium —
economic substitute for ..... VIII, 109
extent of trade ..... VIII, 53
memorandum on production ..... VIII, 109
production ..... VIII, 47, 53, 109
prohibition of culture ..... VIII, 53
use of ..... VIII, 105
permanent delegate to League
VIII, 621; IX, 156
proposal for inquiry commission on opium production ..... VIII, 110
signatory of protocol of World Court .. IX, 567
treaty for advancement of peace with United States not in force ..... IX, 545
treaty of friendship with Afghanistan .. IX, 453
Peru:
arbitration —
Canevaro claim ..... IX, 469
French claims against ..... IX, 469
arbitration settlements ..... IX, 476
arbitration treaties —
Argentina, 1874 ..... IX, 588
Bolivia, 1863, 1873 ..... IX, 588
Bolivia, 1901, 1918 ..... IX, 590, 595
Brazil, 1909, 1918 ..... IX, 592, 595
Colombia, 1829, 1870, 1905
IX, 587, 588, 591
index of ..... IX, 587–607
Italy, 1905 ..... IX, 591
Spain, 1897 ..... IX, 589
United States, 1908, 1914 .. IX, 523, 591, 593
Uruguay, 1917 ..... IX, 594
Venezuela, 1912, 1923 ..... IX, 593, 596
budget unit of League of Nations ... VIII, 406
coca leaves ..... VIII, 139
consumption ..... VIII, 110
production ..... VIII, 47
use of by Indians ..... VIII, 42
commission of inquiry —
treaty with United States, 1914 .... IX, 543
Japanese emigration to ..... VII, 282

PAGE

Peru — Continued.
Japanese residents in.....VII, 283
member of —
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Pessôa, Epitacio da Silva VII, 0, 86, 102, 127; VIII, 582
Pestalozza, Ernesto.....VIII, 505
Peter, Agnes.....VII, 34
Petrovich, Nicolas.....IX, 306
Pflug, M.....VIII, 534
Pflügl, Emeric von.....VIII, 620; IX, 639
Phelan, Edward J.....VII, 143; VIII, 592
Phelan, James D.....IX, 553
Philippines, The:
American Commission for investigation of opium question.....VIII, 41
bibliography.....VIII, 12, 20
"The Philippines to the End of the Commission Government" by Charles Burke Elliott.....VIII, 12
"The Philippines to the End of the Military Régime" by Charles Burke Elliott VIII, 12
"The Philippines, Past and Present" by Dean Conant Worcester.....VIII, 12
Phillimore, Lord..VII, 125; VIII, 581; IX, 565
Phillips, F.....VIII, 403
Phillips, Rev. T. E. R.....VII, 213; VIII, 535
Piachaud-Mayras, Mme. J..VIII, 402; IX, 167
Pierce, Jason Noble.....VII, 34
Pilotti, Massimo.....IX, 626, 637
Pinot, Robert.....VIII, 590
Pinson, W. W.....VII, 34
Pinto, José.....IX, 542
Pinto-Escalier, Arturo.....VIII, 194
Pipinellis, Panayotis.....IX, 625
Pirelli, Dr. Alberto.....VII, 215; VIII, 511
Pitkin, Walter Boughton.....VIII, 16
Pittaluga, Gustave VII, 202; VIII, 497, 504, 506
Pittman, Key.....VII, 39
Plebiscite, Upper Silesia.....VII, 170–173
Poensgen, M.....VII, 195
Poindexter, Miles.....IX, 537
Poland:
acquisition of Polish nationality by German settlers....VII, 134–135; VIII, 350
advisory opinion of Permanent Court on postal service in port of Danzig IX, 124–126, 570
agreement regarding the distribution of Dawes annuities.....VIII, 276–291
arbitration treaties —
Austria, 1923, 1926.....IX, 597, 600
Czechoslovakia, 1925.....IX, 598
Denmark, 1926.....IX, 600
Esthonia, 1925.....IX, 598

PAGE

Poland — Continued.
Finland, 1925.....IX, 598
France, 1925.....IX, 73–74
Germany, 1925.....IX, 24, 66–71, 599
Latvia, 1925.....IX, 598
Sweden, 1925.....IX, 599
Switzerland, 1925.....IX, 598
boundary with Czechoslovakia VII, 135–137; VIII, 353
budget unit of League of Nations...VIII, 406
conciliation commissions —
treaty with Czechoslovakia.....VIII, 412
treaty with Esthonia.....VIII, 413
treaty with Finland on.....VIII, 413
treaty with Latvia on.....VIII, 413
Czechoslovakian frontier dispute VII, 135–137; VIII, 353, 446–447
dispute with Lithuania VII, 166–170; VIII, 428–432
epidemics.....VIII, 502
establishment of.....VIII, 354
German settlers, Court opinion on VII, 132–133; VIII, 348
Germano-Polish convention.....IX, 317
health service, international cooperation.....VII, 203
intervention in Kiel Canal case.....VIII, 346
Jaworzina frontier VII, 135–137; VIII, 446–447
Locarno settlement.....IX, 1–75
member of —
conference of signatories to Protocol of Signature of Court.....IX, 626
European Health Conference.....VII, 204
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
minorities.....VIII, 348
acquisition of nationality by.....VIII, 350
in Lithuania.....IX, 324
treaty.....VII, 237
payment of debt on territories received VIII, 293
Permanent Court, opinion of, on German settlers.....VII, 133
permanent delegate to League VIII, 620; IX, 156
postal service in port of Danzig..IX, 124–126
relations with Danzig.....VIII, 578–579
signatory of Final Protocol of Locarno Conference.....IX, 24
signatory of Protocol for Pacific Settlement of International Disputes..VII, 391
signatory of protocol of World Court..IX, 567
Suwalki agreement.....VIII, 430
treaties establishing conciliation commissions.....VIII, 412, 413

PAGE

Poland — Continued.
treaty with France, Feb. 19, 1921...IX, 29
Upper Silesia —
boundary.....VII, 170–173
insurance funds.....IX, 217
plebiscite.....VIII, 432–434
territories.....VIII, 293
Vilna occupation.....VIII, 430
Warsaw agreement, Oct. 24, 1921....IX, 125
"The Political Future of India" by Lajpat Raya.....VIII, 21
"A Political History of Japan during the Meiji Era, 1867–1912" by Walter Wallace McLaren.....VIII, 9
Politis, Athanase.....VII, 208; VIII, 524, 533
Politis, Nicolas..VII, 178, 393, 414, 553; VIII, 367, 439, 619
Polk, Frank K.....IX, 412
Pollock, Sir Ernest.....VII, 88; VIII, 341
Poma, Commendatore.....IX, 315
Pomenov, M.....IX, 640
Pône, Camille.....VII, 143; VIII, 592
Pope, Katherine.....VIII, 13
Popesco, Georges...VII, 208; VIII, 467, 469, 524, 530, 532; IX, 238
"A Popular Discussion of the Protocol" by John H. Clarke.....VII, 509–517
"Population" by Harold Wright.....VIII, 24
"The Population Problem . . ." by A. M. Carr-Saunders.....VIII, 24
Porter, Stephen G.:
letter from the delegation of the United States to the president of the Second Opium Conference.....VIII, 166
member of American delegation, 5th sess., opium committee VII, 17, 18, 106; VIII, 78
member of delegation to opium conferences...VIII, 100, 101, 103, 384, 554
member of League Advisory Committee on Opium.....VII, 195, 196
refusal to sign opium agreement....VIII, 98
resolution on limitation of opium production.....VIII, 138–141
speech at First Opium Conference VIII, 96, 97
speech on opium production.....VIII, 79
statement against Viscount Cecil....VIII, 107
Ports, see League of Nations, Organization for Communications and Transit.
Portugal:
agreement regarding the distribution of the Dawes annuities.....VIII, 276–291
agreement with Germany, Aug. 30, 1924 VIII, 257–261
arbitration —
constitution provides for.....IX, 459
frontiers on island of Timor.....IX, 469
seizure of religious goods in Portugal IX, 469

PAGE

Portugal — Continued.
arbitration settlements.....IX, 476
arbitration treaties —
Brazil, 1909.....IX, 591
Denmark, 1907.....IX, 591
Great Britain, 1904.....IX, 590
Italy, 1905.....IX, 591
Netherlands, 1894, 1904.....IX, 589, 590
Nicaragua, 1909.....IX, 592
Norway, 1908.....IX, 591
Panama, 1914.....IX, 593
Spain, 1904, 1925.....IX, 590, 598
Sweden, 1913.....IX, 593
Switzerland, 1905.....IX, 591
United States, 1908, 1914..IX, 523, 591, 593
budget unit of League of Nations....VIII, 406
commission of inquiry —
treaty with United States, 1914....IX, 544
declaration on signing First Opium Conference convention.....VIII, 175
deliveries in kind second year of Experts' plan.....VIII, 290
member —
Advisory Committee on traffic in Opium VII, 195
conference of signatories to Protocol of Signature of Court.....IX, 627
First Opium Conference.....VIII, 169
International Labor Organization VII, 138; VIII, 585
League of Nations...VII, 104; VIII, 380; IX, 142
opium antismoking conference....VIII, 87
Permanent Court of International Justice.....VIII, 581
Second Opium Conference.....VIII, 192
opium —
auction system maintained.....VIII, 51
certificate system in force.....VIII, 51
control in Macao.....VIII, 87
monopoly in Macao.....VIII, 61
revenue from Macao.....VIII, 63
optional clause of World Court signed IX, 567
declaration.....IX, 643
reparation —
percentage under Experts' plan...VIII, 305
signatory of Protocol for Pacific Settlement of International Disputes..VII, 391
signatory of protocol of World Court..IX, 567
signed protocol of London Conference VIII, 236–237
Posner, Stanislas..VII, 221; VIII, 545; IX, 303
Pospisil, Dr. Vilem VII, 215; VIII, 467, 511; IX, 238
Postal conventions.....IX, 456
Pottevin, Dr. H.....VIII, 505
Pottzer, M.....VII, 553; VIII, 619
Poulton, E. L.....VIII, 590
Pound, Dean Roscoe.....VII, 8
Prabha Karavongse, Phya.....IX, 160

PAGE

Presbyterian Church.....VII, 34
President of the United States:
Cleveland —
arbitration attitude.....IX, 498, 500
message with arbitration treaty of 1897 IX, 503
Coolidge —
action on World Court.....IX, 31, 013
annual message, Dec. 6, 1923..VII, 9; IX, 83
claims conventions with Mexico IX, 374, 431–439
speech of July 3, 1925.....IX, 22
statement on League of Nations...VII, 26
statement regarding immigration act of 1924.....VII, 371
statements on World Court..VIII, 215–216
Harding —
relation to World Court.....IX, 83
asked Senate's advice and consent to protocol of signature of Permanent Court of International Justice...VII, 9
letter to Bishop Gailor.....VII, 7
McKinley —
arbitration treaty of 1897.....IX, 506
instructions to Hague Conference delegates.....VII, 78
Roosevelt —
annual message, Dec. 9, 1903.....IX, 513
annual message, Dec. 6, 1904.....IX, 514
attitude on arbitration treaties of 1904 IX, 515
attitude on Japanese immigration..VII, 287
calling of International Opium Commission, 1909.....VIII, 142
dispute between United States and Mexico.....VII, 78
"gentlemen's agreement" with Japan VII, 288
initiation of Second Hague Conference IX, 471
letter to Henry Cabot Lodge.....IX, 515
letter to Senator Cullom.....IX, 520
protests against Japanese exclusion laws VII, 304
Taft —
attitude on arbitration treaties of 1911 series.....IX, 534
debate on 1911 treaties.....IX, 529
formula for 1911 arbitration treaties IX, 454
questions of "national honor".....IX, 524
termination of treaty of 1832 with Russia.....VII, 304
Wilson —
abolition of drug traffic.....VIII, 142
adoption of program of League to Enforce Peace.....VII, 554
attitude on Japanese exclusion....VII, 305
call for League of Nations opening..VII, 8
forcible action on Mexico.....IX, 487

PAGE

President of the United States — Continued.
"fourteenth point".....VII, 554
guaranties for world peace.....IX, 11
mandate for Armenia urged.....VII, 577
occupation of Vera Cruz.....IX, 487
Prezzolini, G.....IX, 297
Pribram, Karl....VII, 143; VIII, 592; IX, 274
Pritchett, Dr. Henry S.....VII, 488
Private international law, unification of VIII, 423
Private manufacture of arms.....IX, 243
Privateering.....IX, 461
Prize Court, International.....IX, 474
"The Problem of China" by Bertrand Arthur W. Russell.....VIII, 32
"The Problem of the Pacific in the Twentieth Century" by Genl. N. Golovin VIII. 34
"The Problem of Population" by Harold Cox.....VIII, 24
"Problems of the Pacific," bibliography by Raymond Leslie Buell.....VIII, 1–34
Protection of artistic and literary property VIII, 419
Protection of Industrial Property, International Convention on.....VIII, 520
Prothero, George Walter.....VIII, 14
"The Protocol and its Implications" by A. Lawrence Lowell.....VII, 518–525
Protocol for Pacific Settlement of International Disputes:
account of...VII, 391–452; VIII, 609–619; IX, 173–183
"aggressive war an international crime" VII, 393, 399, 401, 406–407, 513
aggressor, determination of.....VII, 435–439
American participation.....VII, 391
application to nonmembers of League VII, 399, 409
application to nonsignatory states....VII, 408
Arbitrators, Committee of.....VII, 402, 404
Assembly action under Protocol system VII, 432–433
British opposition to.....IX, 576
classes of disputes.....VII, 510
compulsory arbitration of non-legal disputes.....VII, 394–395, 404
compulsory jurisdiction of Permanent Court.....VII, 394, 402
conference on disarmament.....VII, 392, 409
demilitarized zones.....VII, 396,405
discussed by —
Justice John H. Clarke.....VII, 509–517
A. Lawrence Lowell.....VII, 518–525
Elihu Root.....VII, 526–527
disputes between states signatory and nonsignatory.....VII, 439–440
"domestic questions" VII, 395–396, 403–404, 521–522
draft treaty for league of nations precursor of.....VII, 555–560

PAGE

Protocol for Pacific Settlement of International Disputes — Continued.
economic blockade ..... VII, 512
guaranties of assistance.... VII, 398, 407–408
interpretation to be submitted to Permanent Court ..... VII, 409
Japanese amendment..... VII, 396, 522–523
meaning of word "protocol" ..... VII, 509
nature of the instrument..... VII, 391, 401
notice to Council on preparations of signatory state for war..... VII, 405
open for signature..... VII, 402
origin of..... VII, 392–393
parties ..... VII, 391
plan of ..... VII, 393
prevention of hostile preparations VII, 396, 404
procedure on disputes..... VII, 402, 511
program of reduction of armaments... VII, 411
ratifications required..... VII, 392, 409–410
reference of disputes to Assembly.... VII, 404
relation to Covenant of League..... VII, 409
sanctions, application of VII, 397, 406–408, 443–449
system for settlement of disputes ... VII, 446
text of..... VII, 543–553
Protocol of Signature of the Permanent Court of International Justice, Dec. 16, 1920..... VIII, 409
Protocol on arbitration clauses in commercial matters, Sept. 24, 1923..... VIII, 413
Protocol on the financial reconstruction of Hungary, Mar. 14, 1924..... VIII, 414
Protocol putting into force Opium Convention, 1912..... VIII, 137
Protocol regarding chemical and bacteriological warfare, June 17, 1925.. VIII, 418
Protocol respecting the suppression of opium smoking ..... VIII, 417
Protocols relating to the financial restoration of Austria ..... VIII, 413
Provisions for protection of minorities VIII, 408
Pruneda, Lt. Col. Garcia de VII, 146; VIII, 464, 469
Putnam, Herbert..... VIII, 538

Quarterly Bulletin of Information on the Work of International Organizations VII, 243; VIII, 561
Quesada, M. de..... IX, 468
Quiñones de Léon, J. VII, 553; VIII, 619; IX, 200, 329

Rabel, M ..... IX, 127
"Race and National Solidarity" by Charles Conant Josey. ..... VIII, 28
"Race as a Factor in Political Theory" by Frank H. Hankins..... VIII, 28
Racovitza, Prof. Emile..... IX, 296
Rafiq, Sir Muhammad..... VIII, 422
Raggi, Salvago..... VIII, 239
Railways, international..... VII, 210
Rajchman, Dr. Ludwik... VII, 121; VIII, 402, 503, 505; IX, 167, 262
Rappard, William E. VII 10, 120, 235; VIII, 491
Rathbone, Eleanor.... VIII, 546; IX, 302, 303
Rault, V ..... VII, 231; VIII, 575; IX, 327
"Raw Materials and Foodstuffs in the Commercial Policies of Nations" by William S. Culbertson..... VIII, 23
Raya, Lajpat..... VIII, 21
Raynaud, Dr. L. VII, 202; VIII, 497, 504, 506, 507
Razicotsikas, Capt..... VIII, 531
"The Real Japanese Question" by Kiyoshi Karl Kawakami..... VIII, 27
Rebello, A. R ..... VIII, 402
Red Cross, American..... VIII, 458, 567
Red Cross Societies, League of... VII, 21, 107, 199, 200, 201, 541; IX, 312
Redmond, C. F..... VII, 39
Reduction of armaments, see Armament, and also League of Nations.
Reed, James..... IX, 538
Rees, H. van..... VII, 235; VIII, 490, 493
Refugees, see League of Nations.
Registration, see Treaties.
Regnault, M .... VII, 221; VIII, 545; IX, 303
Reinhardt, Heinrich..... VIII, 467, 469
Reis, Jayme Batalha..... VII, 102
Relief of peoples overtaken by disaster VIII, 419
"The Religions of Mankind" by Edmund Davison Soper..... VIII, 33
"The Religious and Social Problems of the Orient" by Masaharu Anesaki.. VIII, 32
Renault, M ..... IX, 468
Reninger, Mr..... VIII, 391
Rentis, M ..... IX, 216
Reparation:
administrative expenses..... VIII, 297
Agent General for Reparation payments —
American nationality required.... VIII, 228
disposal of funds..... VIII, 256–257
distribution of payments.... VIII, 290, 313
duties..... VIII, 311
method of payment to..... VIII, 221
monthly payments ..... VIII, 313
notice of Nov. 14, 1924, to German finance minister..... VIII, 318–319
rectification of defects in Experts' plan VIII, 256
salary of..... VIII, 308
agreement regarding the distribution of Dawes annuities, Jan. 14, 1925 VIII, 277–291
Allied-German agreement, Aug. 30, 1924 VIII, 250–257, 311–314

PAGE

Reparation — Continued.
Allied Governments —
commercial contracts.....VIII, 253
amount of payments under Experts' plan.....VIII, 303–305
arbitration of disputes VIII, 221, 250–251, 254, 255
armies of occupation, costs of VIII, 278–279, 289, 297
arrears, recovery of.....VIII, 288
Belgium —
debits for allotted vessels under Spa protocol.....VIII, 287
war debt.....VIII, 280
bonds of German nationals.....VIII, 292
British Reparation Recovery Act...VIII, 312
Bulgaria —
payments under Sofia protocol...VIII, 289
cash deliveries.....VIII, 295
clearing offices.....VIII, 271, 284
commissions of control, cost of VIII, 277–278, 279, 287, 297
compensation due European Commission of the Danube.....VIII, 284
cost of military occupation in plebiscite zones.....VIII, 283
costs of armies of occupation, 1924–25 VIII, 278–279, 286
Czechoslovakia —
payment for deliveries in kind...VIII, 289
Danzig, properties ceded to.....VIII, 290
Dawes annuities, allocation of..VIII, 277–284
"The Dawes Plan in Operation" VIII, 221–326
deliveries in kind —
appropriation to costs of army of occupation.....VIII, 286
payment by Czechoslovakia.....VIII, 289
retention of receipts by Allied Governments.....VIII, 286
destockage and exploitation.....VIII, 297
elimination of politics.....VIII, 221
Experts' plan —
agreement for carrying out...VIII, 238–239
amount of payments under VIII, 296, 303–305
annuities.....VIII, 298
appointment of commissioner of controlled revenues.....VIII, 243
arbitration of disputes by President of Permanent Court.....VIII, 249
arbitration procedure VIII, 250–251, 284, 290, 315–318
beginning of operation.....VIII, 311
Board of Directors.....VIII, 309
Commissioner of Controlled Revenues —
advisory committee.....VIII, 310
failure of payment on railway bonds and industrial debentures....VIII, 245
instructions for transfer of payments VIII, 244–245

PAGE

Reparation — Continued.
investment of moneys.....VIII, 244
levying of indirect taxes.....VIII, 248
measures if budget liabilities decline VIII, 248–249
reserve fund.....VIII, 244
rights under Experts' plan..VIII, 245–247
sale of preference shares of "Deutsche Reichsbahn".....VIII, 250
Committee of Guaranties.....VIII, 306
controlled revenues.....VIII, 242–250, 310
decision on operation of.....VIII, 230
deliveries in kind —
in transition period.....VIII, 313
to Portugal in second year.....VIII, 290
Deliveries in Kind Committee...VIII, 307
Deutsche Reichsbahn.....VIII, 314
distribution accounts.....VIII, 284
due dates on railway bonds.....VIII, 290
Erste Donan Dampfschifffahrts, sale of VIII, 293
entrance into force.....VIII, 311
Financial Service.....VIII, 306
first year of plan.....VIII, 221
Franco-Belgian railway régie.....VIII, 312
Franco-British memorandum on application of.....VIII, 223–229
General Manager.....VIII, 309
German laws necessary.....VIII, 311
German Managing Board.....VIII, 309
German Reich Railroad Company VIII, 309
inclusion of all damage and debts under VIII, 269
index of prosperity.....VIII, 303
appointment of committee....VIII, 241
industrial debentures...VIII, 310, 323–324
Information Service.....VIII, 306
interpretation of agreement on distribution of annuities.....VIII, 290
Legal Service.....VIII, 306
licenses.....VIII, 295
Mixed General Board.....VIII, 309
officials under system.....VIII, 308
Organization Committee.....VIII, 309
organization officials under.....VIII, 308
Ottoman Joint Stock Company, sale of VIII, 293
participation of an American citizen in deliberations on.....VIII, 263
payment of excesses and arrears..VIII, 287
payment of interest account.....VIII, 287
payments, Nov. 11, 1918–Feb. 28, 1925 VIII, 295–296
payments by Germany.....VIII, 312
payments for first five years VIII, 239–240
period of payments.....VIII, 223
priorities.....VIII, 299, 300, 301, 302
program for fiscal and economic unity VIII, 312

PAGE

Reparation — Continued.
Prosperity Index Committee.....VIII, 310
Railroad Commissioner.....VIII, 309
Railway Organization Committee VIII, 314
recommendation on distribution of payments.....VIII, 290
régime of external trade.....VIII, 312
Reichsbank.....VIII, 309
Reparation Commission agreement with Germany.....VIII, 231
rights of commissioner of controlled revenues.....VIII, 245–247
safeguarding of loan under.....VIII, 263
second annuity begins.....VIII, 314
sixth year payments under.....VIII, 311
Spa percentages VIII, 299, 300, 301, 302, 304
status of.....VIII, 306
steps in operation of.....VIII, 311
test of.....VIII, 222
Transfer Committee —
composition of.....VIII, 308
duties of.....VIII, 223
German exchange problem....VIII, 319
members of.....VIII, 309
salaries of.....VIII, 308
trustee of railroad bonds.....VIII, 309
"Zollkassen".....VIII, 243, 247
explanation of system.....VIII, 221–223
extension of agreement of Mar. 11, 1922 VIII, 286
final protocol regarding distribution of Dawes annuities.....VIII, 276
First Committee of Experts —
operation of plan.....VIII, 221–326
Germany —
budget burden.....VIII, 222
budgetary contributions.....VIII, 239–242
commissioner of controlled revenues VIII, 243
control of assigned revenues.....VIII, 242
flotation of securities.....VIII, 222
industrial debentures .VIII, 222, 323–324
payments for first five years of Experts' plan.....VIII, 239–240
payments to Reichsbank.....VIII, 240
railway bonds.....VIII, 222
reduction of current payments ..VIII, 223
reservation as to rights and obligations VIII, 291
total charges for 5 years.....VIII, 221
total of exports and imports ....VIII, 240
Transfer Committee .....VIII, 251–256
indemnities in the Cameroons....VIII, 283
index of prosperity.....VIII, 221
interest on German external loan ..VIII, 297
Japan —
debit for Shantung railways and mines VIII, 287

PAGE

Reparation — Continued.
London Conference —
admission of Germany.....VIII, 230
agreements between Allied Governments and Germany, Aug. 30, 1924 VIII, 250–264, 311–314
agreements in force.....VIII, 236
appointment of committees.....VIII, 224
approval of Experts' reports.....VIII, 224
arbitration, employment of.....IX, 15, 16
British note on Ruhr evacuation VIII, 235
committees of jurists.....VIII, 231
conciliation the keynote.....VIII, 230
convening of.....VIII, 231
deliveries in kind, problem of.....VIII, 232
final act.....VIII, 232
final protocol, Aug. 16, 1924 VIII, 236–237
Annex I, agreement between Reparation Commission and Germany VIII, 237–239
Annex II, agreement between Allied Governments and Germany VIII, 250–257
Annex III, agreement between Allied Governments and Germany VIII, 257–261, 311–314
Annex IV, interallied agreement VIII, 261–264
formal signing of documents Aug. 30, 1924.....VIII, 236
French opposition to German participation in.....VIII, 231
invitation to Germany.....VIII, 232
letter of Chancellor Marx on evacuation of Ruhr.....VIII, 233
letter of French and Belgian delegations to Germany.....VIII, 233
participation of United States....VIII, 229
presentation of Experts' reports..VIII, 224
procedure on signature.....IX, 32
program of.....VIII, 227–230
questionnaire to jurists.....VIII, 231
resolution on allocation of payments VIII, 265
resolution of Aug. 16, 1924, on German external loan.....VIII, 321
United States nonsignatory of final act VIII, 231
United States, representatives....VIII, 231
method of paying creditors.....VIII, 222
Military Commission of Control, cost of VIII, 277, 279
mixed arbitral tribunals.....VIII, 271
Naval Commission expenses.....VIII, 297
net available for distribution in first five years.....VIII, 298–302
occupation and Ruhr costs.....VIII, 297
office of reparation payments.....VIII, 297

PAGE

Reparation — Continued.
Paris Financial Agreement —
allocation of payments since 1923 VIII, 265
arbitration of disputes under.....VIII, 317
letter of Secretary Kellogg on allocation of payments.....VIII, 265–266
meeting of finance ministers.....VIII, 267
resolution on allocation of payments VIII, 265
specific American claims.....VIII, 270–273
Portugal —
deliveries in kind.....VIII, 290
repatriation of German prisoners of war VIII, 283
replacement of American troops....VIII, 297
report of Second Committee of Experts VIII, 227
restitution.....VIII, 299, 300, 301, 302
Rhineland agreement.....VIII, 286
requisitions under.....VIII, 278
Rhineland Commission expenses....VIII, 297
Ruhr régime.....VIII, 233, 297
Saar mines.....VIII, 295
Schedule of Payments.....VIII, 313
securities of creditor states.....VIII, 222
settlement of accounts prior to Jan. 14, 1925.....VIII, 284–285
Spa coal advances.....VIII, 237
Spa percentages..VIII, 299, 300, 301, 302, 304
suggestion for League jurisdiction...IX, 14
time of payment to creditors.....VIII, 222
United States —
categories of claims.....VIII, 269
letter of Secretary Kellogg on allocation of payments.....VIII, 265–266
share in Dawes annuities....VIII, 279–280
war expenses in Alsace-Lorraine....VIII, 283
Reparation Commission:
agreement with German Government on Experts' plan.....VIII, 237–239
appointment of American member of Reparation Commission.....VIII, 262
arbitration of disputes under Experts' plan VIII, 250–251, 284, 290, 315–318
arbitration with Germany on operation of system.....VIII, 315
authority of.....VIII, 228
coal tax receipts.....VIII, 295
collection agencies —
Customs Committee of Direction VIII, 294
Interallied Mission of Control for Factories and Mines.....VIII, 294
Managing Committee for Forests..VIII, 294
Managing Committee for Import and Export Licenses.....VIII, 294
Special Accounting Committee for Pledges.....VIII, 294
decision of July 15, 1924.....VIII, 311, 312

PAGE

Reparation Commission — Continued.
decision on default.....VIII, 262
default of Germany.....IX, 13
denial of representation to Japan, Serb-Croat-Slovene State, Rumania, Greece.....VIII, 307
duty of canceling German evidences of indebtedness.....VIII, 308
expenses charged against reparation payments.....VIII, 297
Haidar Pasha Harbor, sale of.....VIII, 293
income from Ruhr occupation.....VIII, 295
legal position in Experts' scheme...VIII, 308
Mersina-Tarsus-Adana Railroad, sale of VIII, 293
president.....VIII, 306
procedure if Germany defaults..VIII, 262–263
railroad régie in Ruhr.....VIII, 295
reduction of personnel.....VIII, 306
reorganization of.....VIII, 306
Reparation Recovery Act adjustment VIII, 318–320
resolution of Oct. 13, 1924, declaring superiority in priorities.....VIII, 321
resolution on Hungarian reconstruction VII, 189
river boats.....VIII, 295
Ruhr accounts.....VIII, 284–285
Ruhr retirement.....VIII, 233, 311
sale of Austrian and Hungarian railroad shares.....VIII, 293
Schedule of Payments.....VIII, 306
Scutari Kadikeuy Water.....VIII, 293
secretary-general.....VIII, 306, 308
Service of Restitutions and Deliveries in Kind.....VIII, 306
settlement of questions by Paris Financial Agreement.....VIII, 275
term of office of American member..VIII, 262
Upper Bosporus and Anatolian Railroad, sale of workshops.....VIII, 293
United States unofficial representative VII, 106
unreported items held by Allies....VIII, 292
Upper Silesian social insurance funds IX, 217
withheld credits.....VIII, 292
working expenses of mines and cokeries VIII, 313
Reparation Recovery Acts.....VIII, 319, 320
Réquin, Col. E. VII, 146; VIII, 464, 467; IX, 238
Réveillaud, J.....VIII, 403, 404
Rew, Sir Henry.....IX, 274
Reynier, Col. de.....IX, 331
Reynold, Gonzague de VII, 226; VIII, 537, 542; IX, 295
Rheinhardt, Heinrich.....VIII, 524; IX, 238
Rhine river.....VIII, 531; IX, 5, 36, 285
Rhineland:
demilitarization.....IX, 33

PAGE

Rhineland — Continued.
guaranty under Locarno agreements IX, 25–26
pacific settlement of questions.....IX, 25
Riben, Capt. C. F. W. de VII, 147; VIII, 464, 467
Ricci-Busatti, Arturo VII, 125; VIII, 581; IX, 274
Rice, William North.....VII, 34
Richard, Henry .....IX, 460
Richmond, Charles A.....VII, 36
Riddell, W. A .....VII, 144; VIII, 620
Rihbany, Abraham Mitrie.....VIII, 32
Ringe, H. Ralph.....IX, 424
Ringland, A. C.....VII, 19, 110; VIII, 389
"The Rising Tide of Color" by Theodore Lothrop Stoddard.....VIII, 28
Rist, Charles.....IX, 220, 226
Ritter, Paul .....IX, 542
Ritzmann, F.....VII, 144
Riza, Khan.....VIII, 190, 191, 194
Road traffic, convention on.....IX, 292
Robinson, J. B.....VIII, 385
Robinson, James Howard.....VIII, 3
Robinson, Joseph T.....VII, 39
Rocco, Alfredo.....IX, 295
Rockefeller Foundation:
grants to Health Organization of League of Nations VII, 21, 108, 203; VIII, 387, 501–502
Rodrigues, Rodrigo J. VIII, 169, 172, 190, 191, 194
Rodríguez, Pedro C.....VIII, 88; IX, 417
Roesle, Dr. E .....VIII, 507
Rohner-Frosali, Mme. D. M. A. VII, 121; VIII, 402; IX, 167
Rolin, Henri.....IX, 624, 637
Rollet, Henri.....VIII, 545; IX, 303
Rome Emigration Conference.....IX, 291
Romo, Alfredo.....IX, 417
Roncagli, Comdr.....VIII, 493
Roode, J. J. de .....VII, 144; VIII, 592
Roosevelt, Theodore:
letter on Colombia treaty with United States .....IX, 539
see also President of the United States.
Root, Elihu:
American Committee of Intellectual Co-operation.....VIII, 538
arbitrator of Permanent Court of Arbitration.....IX, 469
article on "Steps toward Preserving Peace".....VIII, 199–206
attitude on Permanent Court of International Justice.....VII, 43
instructions to American delegates at Second Hague Conference.....IX, 472
member of Committee of Jurists, to draft statute of World Court VII, 8, 36, 109, 125; VIII, 388, 581; IX, 83, 565

PAGE

Root, Elihu — Continued.
minority report on 1911 treaty with France.....IX, 531
relation of Permanent Court to League of Nations.....VII, 90
signatory of treaty with France, 1908 IX, 522
statement relative to American support of the Permanent Court.....VII, 59–60
"The Steps of Progress".....VII, 526–527
Roover, Maj. Marcel de....VII, 241; VIII, 578
Roques, Mario.....VII, 144; VIII, 593
Rosenfeld, Dr. S.....VIII, 507
Ross, Edward Alsworth.....VIII, 11
Ross, Ramón.....IX, 348, 365
Rossetti, Comdr. Carlo.....VIII, 531
Rostworowski, Count Michel IX, 127, 626, 638
Rouaix, Pastor .....IX, 407
Rourke, Mrs. James T.....VII, 36
Rouville, A. de.....VIII, 531
Ruanda-Urundi..... VII, 24
Rubashkin, Dr.....VIII, 504
Ruffini, F...VII, 226; VIII, 537, 542; IX, 296
Ruggles, Brig. Genl. Colden L' H.....VIII, 384
Rumania:
agrarian reform laws VII, 131–132; VIII, 443; IX, 321
agreement regarding the distribution of the Dawes annuities .....VIII, 276–291
agreement with Germany, Aug. 30, 1924 VIII, 257–261
arbitration settlements.....IX, 476
arbitration treaties —
Belgium, 1905.....IX, 591
Italy, 1926.....IX, 600
Switzerland, 1926.....IX, 600
budget unit of League of Nations...VIII, 406
health service, international cooperation VII, 203
Hungarian farmers in.....IX, 320
Hungarian property rights in VII, 131–132; VIII, 442
incursions of Bulgarian bands..VIII, 436–437
malaria.....VIII, 504
member of —
conference of signatories to Protocol of Signature of Court.....IX, 627
European Health Conference.....VII, 204
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice .....VIII, 531
Second Opium Conference.....VIII, 192
minorities protection treaty.....VII, 237
note to Bulgaria on incursions of armed bands.....VII, 175
permanent delegate to League VIII, 620; IX, 156

PAGE

Rumania — Continued.
protest by United States against discrimination of Jews.....VII, 303
reparation —
nonmember of Commission..VIII, 307, 309
percentage under Experts' plan VIII, 304–305
request for Hungarian reconstruction VIII, 455
signatory of protocol of World Court..IX, 567
signed protocol of London Conference VIII, 236–237
Rundstein, Simon.....VIII, 422; IX, 187, 188
Rush-Bagot agreement.....VII, 78, 80
Rushdi Bey, Tevfik..IX, 194, 196, 197, 198, 200
Ruspoli, Capt. Don F.....VIII, 464
Russell, Bertrand Arthur W.....VIII, 32
Russell, Earl.....IX, 493
Russia:
agreement for delivery of Constantinople VII, 573
arbitration —
indemnitaries for damages of 1877..IX, 469
arbitration settlements.....IX, 476
arbitration treaties —
Belgium, 1904.....IX, 590
Brazil, 1910.....IX, 592
Denmark, 1905.....IX, 591
Italy, 1910.....IX, 592
Norway, 1904.....IX, 590
Spain, 1910.....IX, 592
Sweden, 1904.....IX, 590
United States, 1914.....IX, 594
commission of inquiry —
North Sea incident.....IX, 470
treaty with United States, 1914.....IX, 544
First Hague Conference —
calling of.....IX, 464
plans for an arbitral tribunal.....IX, 465
Second Hague Conference —
calling of.....IX, 471
termination of treaty of 1832 by United States.....VII, 303
see also Soviet Union.
"Russia in the Far East" by Leo Pasvolsky VIII, 17
Russian refugees.....VII, 19; IX, 313
Russian Union of Socialist Soviet Republics, see Soviet Union.
Rutenberg concession.....VIII, 359, 371–374
Rund, Mr.....VII, 209

Saar Basin:
administration by League VII, 209, 231; VIII, 575; IX, 143, 327–333
Sacro Lirio, Capt. Baron del.....VIII, 464
Sáenz, Aarón...IX, 383, 384, 385, 386, 388, 396, 397, 417, 422
Safety of life at sea.....VIII, 530
St. Germain-en-Laye, treaty of.....VIII, 475

PAGE

Sainte-Croix, Mme. Avril de VII, 221; IX, 303
Salandra, M.....VII, 178; VIII, 439
Salas, Capt. Xavier de.....VIII, 464
Salisbury, Lord.....IX, 500
Salter, Sir James Arthur VII, 120, 121; VIII, 402; IX, 167
Salvador:
arbitration settlements.....IX, 476
arbitration treaties —
Brazil, 1909.....IX, 592
Colombia, 1880.....IX, 588
Costa Rica, 1895, 1923.....IX, 589, 596
Ecuador, 1890.....IX, 589
Guatemala, 1890, 1923.....IX, 589, 596
Honduras, 1923.....IX, 596
Mexico, 1893.....IX, 589
Nicaragua, 1883, 1923.....IX, 588, 596
Spain, 1902.....IX, 590
Switzerland, 1883.....IX, 497, 588
United States, 1908, 1923.....IX, 523, 596
Uruguay, 1924.....IX, 597
Venezuela, 1883.....IX, 588
Bryan-Chamorro treaty.....IX, 548
budget unit of League of Nations...VIII, 406
Central American Court of Justice...IX, 546
compulsory jurisdiction of Permanent Court.....VII, 126
Gulf of Fonseca condominium.....IX, 549
member —
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice.....VIII, 581
optional clause of World Court signed IX, 567
declaration.....IX, 643
passports, abolition of.....VIII, 528
San José conference.....IX, 546
signatory of protocol of World Court..IX, 567
treaty for advancement of peace, not in force.....IX, 545
Samoa.....VII, 235; VIII, 489
San Marino.....VIII, 381, 332
San Martin, J. Z. de.....IX, 543
Sánchez, Luis.....IX, 400
Sanctions.....VII, 397, 489, 509
Sanger, Sophy.....VII, 143
Sangro y Ros de Olano, Señor Pedro VII, 221; VIII, 545; IX, 303
Sanitary Conventions, International VII, 20, 199
Santiago Conference.....VII, 154
Sapieha, Prince.....VIII, 428
Sarraut, Senator M.....VIII, 567
Sarrut, M.....IX, 468
Sastri, Svrinasa.....VII, 334
Sato, Aimaro.....VIII, 128, 130, 135
Sa'ud, Ibn.....IX, 157
Saura, Señor.....VII, 169

PAGE

Savinsky, A ..... VIII, 128, 130
Schacht, Herr ..... VIII, 309, 325
Schaefer, Charles E ..... VII, 34
Schanzer, Carlo ..... VII, 148, 393
Schappler, Miss ..... VII, 144; VIII, 592
Scheurer, J. G ..... VIII, 128, 130, 133
Schlicke, Alexander ..... VII, 144
Schmidt, A ..... IX, 625, 637
Scholefield, Guy Hardy ..... VIII, 7
Schönfeld, J. F ..... VIII, 534
Schramm, J. R ... VII, 16, 108; VIII, 387, 540
Schreuder, M ..... IX, 331
Schubert, Herr von ..... VIII, 320
Schücking, Walther Max Adrian
VIII, 346, 422; IX, 187, 188
Schulze-Gävernitz, Prof. ... VIII, 540; IX, 297
Schwob, M ..... VIII, 533
Scialoja, Vittorio ..... IX, 155, 160, 185, 626
Scott, J. W. Robertson ..... VIII, 10
Scott, James Brown
VII, 18, 109; VIII, 388; IX, 543
"Sea-Power in the Pacific" by Hector C. Bywater ..... VIII, 33
Second Hague Peace Conference ..... IX, 565
Second International Opium Conference, Feb. 19, 1925 ..... VIII, 418
Securities, Lost, Stolen or Destroyed, legislation on ..... VII, 217
Security and reduction of armaments:
compulsory pacific settlement .. VII, 449–450
preventive measures ..... VII, 442–443
sanctions ..... VII, 443, 449
work of the Third Committee of the Assembly ..... VII, 441–452
see also Arbitration, security and disarmament.
Segrave, Capt. James ..... IX, 470
Seipel, Premier ..... VII, 186; VIII, 452
Seja, S ..... VII, 553; VIII, 619
Sekiba, T ..... VII, 215; VIII, 511
"Self-government in the Philippines" by Maximo M. Kalaw ..... VIII, 20
Seligman, Edwin R. A. VII, 13, 106, 216; VIII, 385, 514; IX, 278
Sells, Dorothy M ..... VII, 12
Semple, Madame Margaret ..... IX, 399
Semple, Mrs. Samuel ..... VII, 34
Sera ..... VII, 22, 107, 205; VIII, 502–503
Serb-Croat-Slovene State:
agreement regarding the distribution of the Dawes annuities ..... VIII, 276–291
agreement with Germany Aug. 30, 1924
VIII, 257–261
Albanian boundary ..... VIII, 361, 434, 435
arbitration treaties —
Austria ..... IX, 600
Greece ..... IX, 600
budget unit of League of Nations .... VIII, 406
cultivation of poppy ..... VIII, 53
dispute with Albania ..... VII, 173–175

PAGE

Serb-Croat-Slovene State — Continued.
dispute with Hungary ..... VII, 176
health service, international cooperation
VII, 203
incursions of Bulgarian bands .. VIII, 436–437
malaria ..... VIII, 504
member of —
conference of signatories to Protocol of Signature of Court ..... IX, 627
International Labor Organization
VII, 138; VIII, 585
League of Nations
VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice ..... VIII, 581
Second Opium Conference ..... VIII, 192
minorities protection treaty ..... VII, 237
monastery of Saint-Naoum ..... VIII, 448
note to Bulgaria on incursions of armed bands ..... VII, 175
opium production .. VIII, 47, 53, 109, 110, 111
permanent delegate to League ..... IX, 156
reparation —
approval of Experts' plan ..... VIII, 224
nonmember of Commission .. VIII, 307, 309
percentage under Experts' plan .. VIII, 305
recovery of arrears ..... VIII, 288
request for Hungarian reconstruction
VIII, 455
reservations on opium production limitation ..... VIII, 113
signatory of Protocol for Pacific Settlement of International Disputes .. VII, 391
signatory of protocol of World Court
IX, 567
signed protocol of London Conference
VIII, 236–237
Serbia:
arbitration settlements ..... IX, 476
Serruys, Daniel ..... VII, 215; VIII, 511, 521
Sèvres, treaty of, August 10, 1920
VII, 576–578; VIII, 372
Sfarcic, Dr ..... VIII, 504
Shartle, Amos ..... VIII, 10
Shaw, Thomas ..... VII, 12, 105; VIII, 382
Sheffield, James R ..... IX, 382
Sheldon, Lionel A ..... IX, 495
Shepardson, Whitney H.
VII, 10, 109; VIII, 388
Shepherd, M. L ..... VIII, 189, 191, 194
Sherman, John ..... IX, 499, 505
Shields, John K ..... VII, 39
Shinobu, J ..... VIII, 133
Shinomoto, Lt. Col. K ..... VII, 146; VIII, 464
Shioden, Brig. Gen ..... VIII, 464
Shipstead, Henrik ..... VII, 39
Short, William H ..... VII, 554
Shotwell, Dr. James T .... VII, 11, 392, 488, 527
Siam:
arbitration settlements ..... IX, 476

PAGE

Siam — Continued.
arbitration treaties —
Denmark, 1925 ..... IX, 599
France, 1925 ..... IX, 598
Great Britain, 1925 ..... IX, 599
Italy, 1925 ..... IX, 598
Norway, 1925 ..... IX, 598
Spain, 1925 ..... IX, 598
Sweden, 1925 ..... IX, 599
budget unit of League of Nations... VIII, 406
claims under Art. 296 of treaty of Versailles ..... IX, 579
declaration on signing First Opium Conference convention ..... VIII, 175
member of —
Advisory Committee on Traffic in Opium ..... VII, 195
conference of signatories to Protocol of Signature of Court ..... IX, 627
First Opium Conference ..... VIII, 169
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
opium antismoking conference .... VIII, 87
Permanent Court of International Justice ..... VIII, 581
Second Opium Conference ..... VIII, 192
opium control ..... VIII, 59
opium, revenue from ..... VIII, 59, 63
permanent delegate to League VIII, 620; IX, 156
signatory of protocol of World Court IX, 567
treaty relations with Great Britain.. VIII, 59
Sicco, Maj. Pedro ..... VII, 147; VIII, 464
Sidzikauskas, Venceslas ..... IX, 324, 637
Siemens, Karl Friedrich von ..... VIII, 326
Sih-Gung Cheng ..... VIII, 11
Simiand, M ..... IX, 274
Simon, Abram ..... VII, 34
Sinigalia, Girolamo.. VII, 208; VIII, 524, 533
Sinninghe-Damste, J. H. R.. VIII, 515; IX, 277
Sitgreaves, Samuel ..... IX, 483
"Sixth Yearbook of the League of Nations" IX, 131–333
Sjöborg, A. E. M ..... IX, 627, 638
Sjöborg, Erik ..... VIII, 467; IX, 238
Sjostrand, Mr ..... VIII, 521
Skokowski, Z ..... VIII, 592
Skrzynski, Alexander VII, 553; VIII, 619; IX, 155, 160
Slavery Commission ..... VIII, 493; IX, 253
Smit, J. S ..... IX, 624
Smith, Rear Adml. Aubrey C. H. VII, 146; VIII, 464, 467; IX, 238
Smith, Gabriel ..... VII, 208; VIII, 524, 530
Smith, Dr. Howard F .... VII, 22, 107; VIII, 384
Smith, Sir Hubert Llewellyn.. VII, 215, 218; VIII, 511, 521; IX, 271

PAGE

Smith, Jeremiah, Jr., Commissioner General of League of Nations in Hungary.. VII, 13, 107, 191; VIII, 385, 457; IX, 229
Smith, Reginald Heber.. VII, 17, 110; VIII, 389
Smith, William Alden ..... IX, 533
Smuts, Genl. Jan Christian, member of League of Nations Commission.. VII, 102
Snow, Col. William F. VII, 19, 110, 222; VIII, 390, 547
Social Hygiene Bureau of New York VII, 19, 110; VIII, 390
Société de législation comparée VIII, 423; IX, 189
Society of Friends ..... VII, 34
Soleri, Signor ..... VIII, 403
Sombron, Capt ..... IX, 470
Somervell, Maj. Brehon B. VIII, 385, 532; IX, 285
Soper, Edmund Davison ..... VIII, 33
Soriano, Gen. Jorge ..... VIII, 464, 467
Sosnkowski, Genl ..... IX, 233
Sottile, Antoine ..... VIII, 621
South Africa:
agreement with Germany Aug. 30, 1924 VIII, 257–261
arbitration treaties —
with Switzerland, 1885 ..... IX, 497
budget unit of League of Nations... VIII, 406
exclusion of Japanese immigrants... VII, 296
mandate for Southwest Africa..... VIII, 489
member of —
conference of signatories to Protocol of Signature of Court ..... IX, 624
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice ..... VIII, 581
reparation percentage under Experts' plan VIII, 305
signatory of protocol of World Court IX, 567
signed protocol of London Conference VIII, 236–237
South America, Japanese residents in.. VII, 283
Souza e Silva, Rear-Adml. de VII, 146; VIII, 463; IX, 233
Soviet Union:
arbitration treaties —
Germany, 1926 ..... IX, 600
Lithuania, 1926 ..... VII, 166; IX, 601
cooperation with League of Nations.. VII, 111
dispute with Finland over Eastern Carelia VII, 131–132; VIII, 343, 445
health service, international cooperation VII, 203
malaria ..... VIII, 504
member of European Health Conference VII, 204

PAGE

Soviet Union — Continued.
nonmember of League of Nations VII, 105; VIII, 381, 392
nonsignatory of 1912 convention on opium VIII, 72
participation in League of Nations activities VII, 111
Spa conference VIII, 354, 446
Spain:
arbitration —
blockading powers preference IX, 468
seizure of religious goods in Portugal IX, 469
arbitration settlements IX, 476
arbitration treaties —
Argentina, 1916 IX, 594
Belgium, 1905 IX, 590
Bolivia, 1902 IX, 590
Brazil, 1909 IX, 591
Colombia, 1894, 1902 IX, 589, 590
Denmark, 1905 IX, 591
Dominican Republic, 1902 IX, 590
Ecuador, 1888 IX, 589
France, 1904 IX, 590
Great Britain, 1904 IX, 590
Greece, 1909 IX, 592
Guatemala, 1902 IX, 590
Honduras, 1894, 1905 IX, 589, 591
Italy, 1910, 1926 IX, 592, 600
Mexico, 1902 IX, 590
Nicaragua, 1904 IX, 590
Norway, 1905 IX, 590
Panama, 1912 IX, 593
Paraguay, 1915 IX, 594
Peru, 1897 IX, 589
Portugal, 1904, 1925 IX, 590, 598
Russia, 1910 IX, 592
Salvador, 1902 IX, 590
Siam, 1925 IX, 598
Sweden, 1905 IX, 590
Switzerland, 1913, 1926 IX, 593, 600
United States, 1908, 1914 IX, 523, 594
Uruguay, 1902, 1922 IX, 590, 596
Venezuela, 1882 IX, 588
attitude on Protocol for Pacific Settlement IX, 179
budget unit of League of Nations VIII, 406
commission of inquiry —
treaty with United States, 1914 IX, 544
declaration on Ifni IX, 237
discrimination against foreign negroes in Cuba VII, 302
health service, international cooperation VII, 203
member of —
conference of signatories to Protocol of Signature of Court IX, 623
European Health Conference VII, 204
International Labor Organization VII, 138; VIII, 585

PAGE

Spain — Continued.
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice VIII, 581
Second Opium Conference VIII, 192
signatory of protocol of World Court IX, 567
Spalaikovitch, M VIII, 361
Special Reports VIII, 593
Speisser, Pablo IX, 544
Spencer, Mrs. Anna Garlin VII, 35
Stamp, Sir Josiah C. VII, 216; VIII, 514; IX, 278
Stampar, Dr. A IX, 261
Stanley, Lord IX, 493
Statistics:
Committee of Experts VII, 218
health statisticians VII, 108
International Institute of VII, 217; VIII, 517
Preparatory Committee on Statistical Methodology VIII, 517
Statistics, Monthly Bulletin of VII, 214
S.S. *Wimbledon* case VIII, 345; IX, 95
Stefani, Alberto de' VIII, 276, 291
Stephens, G. W. VII, 231; VIII, 575; IX, 327
Stephens, Gov. W. D VII, 293
"The Steps of Progress" by Elihu Root VII, 526–527
"Steps toward Preserving Peace" by Elihu Root VIII, 199–206
Sterrett, Joseph E VIII, 309
Stevenson, Mrs. Reginald B VII, 34
Stevenson, Dr. T. H. C VIII, 507, 508
"Stewart's Handbook of the Pacific Islands" by Percy S. Allen VIII, 7
Stewart, Mary VII, 35
Sthamer, Herr IX, 51
Stieler, Herr VIII, 326
Stievenard, Dr. A. VII, 208; VIII, 524, 530, 532
Stimson, Henry L VII, 36
Stoddard, Theodore Lothrop VIII, 28
Stone, William J IX, 558
Storm, John B IX, 494
Storms, C. H VIII, 12
"The Story of Korea" by Joseph Henry Longford VIII, 12
Stowe, Harriet Beecher IX, 341
Stoyadinovitch, M VIII, 276, 291
Strakosch, Sir Henry VII, 215; VIII, 403, 511
Straus, Oscar S VII, 8, 554
Stresemann, Gustav IX, 9, 50
Strong, Maj. Geo. W VIII, 384
Strong, Dr. Richard P VII, 21
Struycken, A VII, 164; VIII, 426
Stuart, Prof. Verrijn IX, 274
Studer-Steinhäuslin, Mme VII, 221
Studies and Reports VIII, 593
Sturge, Joseph IX, 480

PAGE

Suarez, José León.....VIII, 422; IX, 187
Sublime Porte, see Turkey.
Sudan.....VIII, 382
Suez Canal.....VIII, 346
Sugimura, Yotaro...VII, 208, 221; VIII, 105, 169, 172, 189, 191, 194, 524, 530, 545; IX, 303
Summerlin, George T...IX, 351, 353, 355, 439
Sumner, Charles.....IX, 494
Supreme Council:
  Polish-Lithuanian dispute.....VII, 166–170
  Upper Silesian boundary.....VII, 171
Supreme War Council.....VIII, 510
Surie, Vice-Adml.....IX, 233
Suwalki agreement.....VII, 168
Swanson, Claude A..VII, 39, 55, 56, 58, 62, 63, 66; VIII, 207
Sweden:
  Aaland Islands dispute VII, 163–166; VIII, 425–468
  arbitration —
    blockading powers preference.....IX, 468
    maritime frontier.....IX, 468
  arbitration treaties —
    Austria, 1926.....IX, 600
    Belgium, 1904, 1926.....IX, 590, 600
    Brazil, 1909.....IX, 592
    Chile, 1920.....IX, 596
    Czechoslovakia, 1926.....IX, 599
    Denmark, 1924, 1926.....IX, 597, 599
    Esthonia, 1925.....IX, 593
    Finland, 1924, 1926.....IX, 597, 599
    France, 1904.....IX, 590
    Germany, 1924.....IX, 597
    Great Britain, 1904.....IX, 590
    Italy, 1911.....IX, 592
    Lithuania, 1925.....IX, 598
    Norway, 1905, 1924, 1925..IX, 591, 597, 599
    Poland, 1925.....IX, 599
    Portugal, 1913.....IX, 593
    Russia, 1904.....IX, 590
    Siam, 1925.....IX, 599
    Spain, 1905.....IX, 590
    Switzerland, 1904, 1924.....IX, 590, 597
    United States, 1908, 1914, 1924 IX, 523, 594, 597
    Uruguay, 1923 .....IX, 596
  budget unit of League of Nations...VIII, 406
  commission of inquiry —
    treaty with United States, 1914....IX, 544
  conciliation commissions —
    with Denmark.....VIII, 413
    with Finland.....VIII, 413
    with Germany.....VIII, 413
    with Norway .....VIII, 413
    with Switzerland.....VIII, 413
  health service, international cooperation VII, 203
  judicial settlement treaty with Denmark IX, 584

PAGE

Sweden — Continued.
  member of —
    conference of signatories to Protocol of Signature of Court.....IX, 627
    European Health Conference.....VII, 204
    International Labor Organization VII, 138; VIII, 585
    League of Nations VII, 104; VIII, 380; IX, 142
    Permanent Court of International Justice.....VIII, 581
    Second Opium Conference.....VIII, 192
  opposition to treaty of guaranty for reparation.....VIII, 226
  optional clause of World Court signed IX, 567
  declaration.....IX, 644
  signatory of protocol of World Court..IX, 567
Sweetser, Arthur...VII, 10, 11, 109, 120; VIII, 389, 401; IX, 166
Swetchine, A.....VIII, 133, 136
Swiggett, Mrs. Glen.....VII, 35
Switzerland:
  arbitration —
    proposal for general treaty with United States.....IX, 497
  arbitration settlements.....IX, 476
  arbitration treaties —
    Argentina, 1924.....IX, 597
    Austria, 1924.....IX, 597
    Belgium, 1904, 1925.....IX, 590, 598
    Brazil, 1924.....IX, 597
    Denmark, 1924.....IX, 584, 597
    Ecuador, 1888.....IX, 497, 589
    France, 1925.....IX, 598
    Germany, 1921.....IX, 19, 596
    Greece, 1925.....IX, 599
    Hungary, 1924.....IX, 597
    Italy, 1904, 1924.....IX, 590, 597
    Japan, 1924.....IX, 598
    Netherlands, 1925.....IX, 599
    Norway, 1904, 1925.....IX, 590, 598
    Poland, 1925.....IX, 593
    Portugal, 1905.....IX, 591
    Rumania, 1926.....IX, 600
    Salvador, 1883.....IX, 497, 588
    South African Republic.....IX, 497
    Spain, 1913, 1926.....IX, 593, 600
    Sweden, 1904, 1924.....IX, 590, 597
    Turkey, 1925.....IX, 599
    United States, 1908.....IX, 523
  budget unit of League of Nations...VIII, 406
  "Canton Road Smuggling Case"..VIII, 69–70
  conciliation commissions with —
    Austria.....VIII, 412
    Brazil.....VIII, 412
    Denmark.....VIII, 413
    Hungary.....VIII, 413
    Italy.....VIII, 413
    Sweden.....VIII, 413

PAGE

Switzerland — Continued.
conciliation system ..... IX, 584
drug manufacturing power ..... VIII, 67
member of —
conference of signatories to Protocol of Signature of Court ..... IX, 627
European Health Conference ..... VII, 204
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice ..... VIII, 581
Second Opium Conference ..... VIII, 192
opium production ..... VIII, 69
optional clause of World Court signed IX, 567
declaration ..... IX, 644
signatory of protocol of World Court .. IX, 567
status unchanged under Protocol .... VII, 451
treaty for advancement of peace, not in force ..... IX, 545
Sydenstricker, Edgar VII, 10, 107; VIII, 386; IX, 258
Syphilis, serodiagnosis of ..... VII, 107, 205
Syria, mandate for .. VII, 24, 234, 589; VIII, 486
Sze, Dr. Alfred ..... VIII, 88, 97, 101

Taft, Henry W. ..... VII, 317
Taft, Lorado ..... VIII, 539
Taft, William Howard:
League to Enforce Peace program VII, 554; IX, 555
see also President of the United States.
Tagore, Rabindranath ..... VIII, 44
Takagi, Tomoe ..... VIII, 128, 130
Takenaka, Capt ..... VII, 146
Talbot, Adolphus R ..... IX, 542
T'ang Tsai-Fou ..... VIII, 135, 137; IX, 640
Taube, Baron de ..... IX, 468
Tax evasion ..... VIII, 514
Taxation, double ..... VII, 216
Tchitcherin, Georg ..... VIII, 344
Tejeda, C. Adalberto ..... IX, 422
Teleki, Paul ..... VIII, 450
Téllez, Manuel C ..... IX, 432, 435
Temporary Mixed Commission on Armaments ..... VII, 146, 148, 400
see also Armaments.
Tengbbom, I ..... IX, 171
Ter Meulen, C. E.
VII, 215; VIII, 322, 511; IX, 284
"Ter Meulen" plan ..... VII, 13, 214, 216
Terbune, Everit B ..... VII, 15, 106; VIII, 385
Theodoli, Marquis A ..... VII, 235; VIII, 490
Theunis, G ..... VIII, 233, 276, 291
"Things Japanese" by Basil Hall Chamberlain ..... VIII, 9
Thomas, Albert VII, 143; VIII, 592; IX, 314
Thompson, Sir Percy ..... VII, 216

PAGE

Thorberg, M ..... VII, 148; VIII, 467, 590
Thrace, Western ..... VII, 576
Thurler, Mlle ..... VIII, 545
Thurston, Walter ..... IX, 412
Tilton, Mrs. Elizabeth ..... VII, 35
Timacheff, M ..... IX, 544
Titulescu, N ..... VIII, 276, 291; IX, 320
Tixier, A ..... VIII, 592
Toca, Sanchez ..... IX, 544
Tod, Robert ..... VII, 20
Toesca, Pietro ..... IX, 298
Togoland, British ..... VIII, 489
Togoland, French ..... VIII, 489
Togoland, mandate for ..... VII, 24, 235
Tokugawa, Iye Masa ..... VIII, 237
Tonta, Comm. Luigi ..... VIII, 531
Torchiana, Henry Albert W. V ..... VIII, 14
Tornquist, Carlos A ..... VII, 215; VIII, 571
Torres Quevedo, L. de
VII, 226; VIII, 537, 542; IX, 296
Torriente y Peraza, Cosme de la ..... VII, 112
Trade prohibition ..... VIII, 518
Traffic in Arms, see League of Nations, Armaments.
"The Traffic in habit-forming Drugs" .. VIII, 19
Traffic in Women and Children, see League of Nations, Women and Children, Traffic in.
Traffic, Opium, see Opium.
Transit, see Communications and Transit.
Transit, freedom of.
see League of Nations, Organization for Communications and Transit.
Transjordania ..... VIII, 486
Transvaal, arbitration settlements ..... IX, 476
Treat, Payson Jackson ..... VIII, 17
Treaties for advancement of peace, list of IX, 541–546
Treaties, minority ..... VII, 237
Treaties, registration of
VII, 192–193; VIII, 461–462
Treaty of London, 1871 ..... VII, 570
Treaty Series ..... VIII, 462; IX, 581
"The Trend of the Race" by Samuel Jackson Holmes ..... VIII, 29
Trianon, treaty of ..... VIII, 443, 475
Trolle, Erik ..... IX, 542
"Tropical Holland" by Henry Albert W. V. Torchiana ..... VIII, 14
Trowbridge, Augustus ..... VIII, 539
"The Truth about China and Japan" by B. L. Putnam Weale ..... VIII, 15
"The Truth about Indian Opium" by G. Graham Dixon ..... VIII, 19
Tsang-Ou ..... VIII, 532
Tsouderos, Em. J ..... VIII, 276, 291
Tsuchihashi, Capt ..... VIII, 464
Tsurumi, Dr. Mitsuzo
VIII, 497, 507, 508, 553; IX, 306
Tuck, S. Pinkney ..... IX, 306

PAGE

Tunis:
British-French dispute over nationality decrees.....VIII, 339
nationality decree.....VII, 103, 130
Turkestan, opium production, 1922....VIII, 47
Turkey:
abrogation of capitulations.....VII, 568
abrogation of treaties with United States VII, 572–573
agreement in treaty of Lausanne to adhere to 1912 opium convention.....VIII, 57
alliance with Germany, Aug. 2, 1914..VII, 569
American rights and interests during the war.....VII, 570–573
Angora, seat of Nationalist Government VII, 578
Assembly, election of.....VII, 575
arbitration —
indemnitaries for damages of 1877 to Russians.....IX, 469
arbitration settlements.....IX, 476
arbitration treaties —
Persia, 1926.....IX, 600
Switzerland, 1925.....IX, 599
Bosporus, opening of.....VII, 576
capitulations —
abolition of.....VII, 565, 585, 588, 593
American attitude on.....VII, 584
disregarded.....VII, 571
collapse of armies, October, 1918.....VII, 573
conference at London on treaty of Sèvres VII, 578
Constantinople inhabitants considered as "established".....VIII, 366
Constantinople, occupation of by Allies VII, 578
cooperation with League of Nations humanitarian commissions.....VII, 111
Court of First Instance.....VII, 601
cultivation of poppy.....VIII, 139
debts, settlement of.....VII, 576
decision of Sublime Porte on capitulations VII, 569
declaration relating to administration of justice.....VII, 600–601
defeat of Greek armies.....VII, 579
deportation of women and children from VII, 19; VIII, 549
disarmament of troops ordered.....VII, 573
distribution of Ottoman public debt...IX, 219
employment of European legal advisers VII, 588, 600
entrance into World War.....VII, 569
exchange of populations.....VIII, 366, 367
expulsion of Œcumenical Patriarch IX, 190–191
foreign judicial advisers.....VII, 585
frontier dispute with Iraq VIII, 449–450; IX, 128–130, 191, 570
functioning of courts.....VII, 588

PAGE

Turkey — Continued.
Greco-Turkish emigration commission VII, 241–242; VIII, 572–574
Greek refugees.....VIII, 457–460
interests in United States under care of Spain.....VII, 596
International Straits Commission....VII, 590
Iraq frontier VIII, 449–450; IX, 128–130, 191
justice, administration of.....VII, 600–601
Lausanne Conference —
American interests involved..VII, 582–586
Chester concessions.....VII, 586
convention on exchange of populations VII, 241
letters exchanged on treatment of religious, scholastic and medical establishments.....VII, 602–603
Mavrommatis Palestine concessions VIII, 371–374
member of European Health Conference VII, 203
member of Second Opium Conference VIII, 192
minorities in Western Thrace.....IX, 319
minorities, rights of.....VII, 576
Moslem inhabitants of Western Thrace VIII, 367
Mudania armistice, October 11, 1922 VII, 579
Mudros armistice, October 30, 1918..VII, 573
National Pact, text of.....VII, 575–576
Nationalist Government's agreement with France.....VII, 578
Nationalist movement —
call for convocation of National Assembly.....VII, 574
congresses.....VII, 574
resolutions of Congress of Sivas, 1919 VII, 574
negotiations with United States..VII, 590–592
nonmember of League of Nations VII, 105; VIII, 381; IX, 157
nonsignatory of opium convention of 1912.....VIII, 72
object of alliance with Central Powers VII, 570
opium production.....VIII, 47, 52
Ottoman public debt.....VII, 580, 587
participation in League of Nations activities.....VII, 111
poppy growing.....VIII, 52
position relative to capitulatory privileges to Americans.....VII, 595
privileges accorded consular courts...VII, 567
proposal for inquiry on opium production VIII, 110
protest of United States on treatment of Armenians.....VII, 571
protocol of 1874 with United States..VII, 566
provisions of treaty of 1830 with United States.....VII, 566

PAGE

Turkey — Continued.
refusal of Smyrna to Greece.....VII, 577
relations with Germany in 1914.....VII, 570
report of Committee of Union and Progress.....VII, 569
reservations on opium production limitation.....VIII, 113
severance of diplomatic relations with United States.....VII, 571
Straits demilitarized.....VII, 590
Sultan's Government under control of Allies.....VII, 574
summary of treaty of amity and commerce with United States.....VII, 597–600
suspension of treaty rights of United States.....VII, 572–573
terms of treaty of Lausanne...VII, 587–590
treatment of Armenians in Turkey...VII, 571
treaty of Lausanne, Aug. 6, 1923, with United States —
provisions of.....VII, 565–603, 590–596
treaty of peace, Mar. 30, 1856....IX, 460–461
treaty of Sèvres unratified.....VII, 578
treaty of Sèvres vs. National Pact....VII, 577
wartime relations with United States VII, 572
Western Thrace, status of.....VII, 576
Turlington, Edgar W., "The American Treaty of Lausanne".....VII, 565–603
Turner, F. P.....VII, 34
Tweedie, H. A.....VIII, 464
Tyler, Roynll.....IX, 229

Uchida, Y.....VII, 330
Uchino, Senichi.....VII, 195
Ukraine:
malaria in.....VIII, 504
member of European Health Conference VII, 203
Ullman, Isaac M.....VII, 36
Unden, O.....IX, 200, 627
Underwood, Joseph R.....IX, 489
Underwood, Oscar W.....VII, 39
Unfair competition.....VIII, 420
Union juridique internationale.....VIII, 423
Union of International Associations....VII, 243
Union Ministers Meeting.....VII, 35
Union of Socialist Soviet Republics, see Soviet Union.
United Society of Christian Endeavor...VII, 35
United States:
act prohibiting importation of opium for heroin manufacture.....VIII, 39
agitation against Japanese in.....VII, 287
adherence resolution to World Court IX, 613
advancement of peace treaties.....IX, 534
agreement regarding distribution of Dawes annuities.....VIII, 276–291
aide-mémoire of October 30, 1922, on American interests at Lausanne Conference VII, 581–582

PAGE

United States — Continued.
Alien Property Custodian.....IX, 579
American citizen president of arbitral commission in case of German default on reparations.....VIII, 263
American committee on intellectual cooperation.....VIII, 538
American-Japanese treaty of November, 1894.....VII, 289
American-Mexican commission —
position of United States on ejidos..IX, 367
American-Mexican understandings on agrarian problem.....IX, 413
American participation in framing of protocol for pacific settlement of international disputes.....VII, 391
Americans cooperating with League of Nations.....VIII, 382–391
Anglo-American project.....IX, 497
Anglo-American-French agreement IX, 11, 13
Anglo-British treaty of 1897 —
Senate debate.....IX, 504
annual message of Dec. 7, 1925, relative to Locarno.....IX, 21
appointment of commissioners to meet Mexican commissioners.....IX, 365
appropriation for participation in opium conferences.....VIII, 142–143
arbitration —
American plans at First Hague Conference.....IX, 465
bill requesting creation of international tribunal.....IX, 498
congressional resolutions, 1874 IX, 494–496
court of.....IX, 465
general treaty with Great Britain, 1897 IX, 501–513
record of.....IX, 477–479
refusal to submit immigration questions VII, 324–327
response to memorial of British House of Commons.....IX, 498, 499
Swiss proposal for general treaty....IX, 497
arbitration settlements —
Alabama claims.....IX, 463, 492–494
blockading powers preference.....IX, 468
claims of "Orinoco" company.....IX, 468
held with Mexico.....IX, 486
list of.....IX, 476
North Atlantic fisheries.....IX, 468
Norwegian claims against VII, 49; IX, 469
Pious funds of the Californias with Mexico.....IX, 468
sovereignty of Island of Palmas....IX, 469
arbitration treaties —
agreement referring disputes to Permanent Court of International Justice.....VII, 9
Argentina, 1923.....IX, 596
Bolivia, 1914.....IX, 593

PAGE

United States — Continued.
Brazil, 1914, 1923.....IX, 594, 596
Chile, 1914, 1923.....IX, 594, 596
China, 1914.....IX, 594
Colombia, 1923.....IX, 596
Costa Rica. 1914, 1923.....IX, 593, 596
Cuba, 1923.....IX, 596
Denmark, 1908, 1914.....IX, 591, 593
Dominican Republic, 1923.....IX, 596
Ecuador, 1909, 1914, 1923
IX, 591, 594, 596
France, 1911, 1914.....IX, 526, 594
Great Britain, 1897, 1908, 1914
IX, 500, 509, 591, 594
Guatemala, 1913, 1923.....IX, 593, 596
Haiti, 1909, 1923.....IX, 591, 596
history of 1908–09 series.....IX, 523
Honduras, 1913, 1923.....IX, 593, 596
invitation to signatories of Hague convention of 1899.....IX, 514
Italy, 1914.....IX, 593
Japan, 1908.....IX, 591
Liberia, 1926.....IX, 600
Mexico, 1848.....IX, 477, 485–487, 587
Morgan-Money report.....IX, 517
naval appropriation bill, 1916.....IX, 554
Netherlands, 1908.....IX, 591
Nicaragua, 1923.....IX, 596
1908–09 series of treaties IX, 521, 522, 523
Norway, 1908, 1914.....IX, 591, 593
Panama, 1923.....IX, 596
Paraguay, 1914, 1923.....IX, 594, 596
Peru, 1908, 1914.....IX, 591, 593
Portugal, 1908, 1914.....IX, 591, 593
Russia, 1914.....IX, 594
Salvador, 1923.....IX, 596
Spain, 1914.....IX, 594
Sweden, 1914, 1924.....IX, 594, 597
Uruguay, 1909, 1914, 1923
IX, 591, 593, 596
Venezuela, 1914, 1923.....IX, 593, 596
army costs
VIII, 268, 270–273, 299, 300, 301, 302
Art. 14 of Mexican petroleum law
IX, 388, 429
attitude on —
adhesion to Court.....IX, 570
arbitration of disputes.....VII, 48–49
Armenian subjects of Turkey.....VII, 568
Dawes Report.....VIII, 231
Mexican jurisdiction over American nationals.....IX, 412
"optional clause" of the Permanent Court of International Justice....VII, 53
Permanent Court of International Justice.....VII, 61
Protocol for Pacific Settlement of International Disputes.....VII, 523–524
Belgium debt to.....VIII, 271
Belgian war debt, attitude on..VIII, 270–271

PAGE

United States — Continued.
British debt payments.....VIII, 225
Bryan-Chamorro treaty, Feb. 8, 1913
IX, 547, 548, 549
Central American tribunals.....IX, 551
Chinese immigrants excluded...VII, 320, 321
Chinese population decrease.....VII, 284
claims against Germany.....VIII, 269
claims at Paris financial conference
VIII, 270–273
claims conventions with Mexico
IX, 374, 431–439
commercial treaties with Japan
VII, 373–374, 378
commission of inquiry —
permanent commission.....IX, 540
treaties for advancement of peace, 1913–14.....IX, 534
Committee on Foreign Relations, members of.....VII, 39
conciliation commissions.....IX, 586
Congress —
attitude on arbitration.....IX, 487–492
declaration of policy, 1916.....IX, 552
petitions on arbitration.....IX, 485
resolution justifying force in Mexico, Apr. 20, 1914.....IX, 487
resolution of appropriation for expense of Opium Conferences.....VIII, 100–101
consumption of opium per capita....VIII, 40
control of distribution of coca leaves
VIII, 103
controversy with Mexico...IX, 351–362, 377
cooperation with League of Nations
VII, 17, 18; VIII, 382–391
court of arbitral disputes, proposal for
IX, 472–474
customs formalities, international conference on.....VIII, 516
declaration of war against Germany..VII, 572
Democratic plank on World Court..VIII, 216
diplomatic protection in Mexico.....IX, 387
disarmament conference.....VIII, 226
discriminatory legislation against Japanese
VII, 300–305
dispute over jurisdiction of penal offenses in Turkey.....VII, 567
draft convention suggested at opium conferences.....VIII, 144–152
draft of protocol for entrance to Permanent Court with reservations
IX, 634–638
draft treaty of disarmament and security of American group.....VII, 488–494
drug addicts.....VIII, 40, 138
drug manufacturing power.....VIII, 67
drugs, per capita consumption.....VIII, 107
establishment of diplomatic relations with Mexico.....IX, 361
exclusion bills against Japanese.....VII, 287

PAGE

United States — Continued.
extradition treaty with Turkey.....VII, 592
failure to honor decisions of Central American Court of Justice.....IX, 549
foreign-born Japanese in.....VII, 283
general claims convention with Mexico, Sept. 8, 1923.....IX, 431
"gentlemen's agreement" with Japan VII, 287–298, 374, 377
German-American Mixed Claims Commission.....IX, 580
Hague convention of 1899, ratification of IX, 517
Hanihara note respecting "gentlemen's agreement".....VII, 358–362
health service, international cooperation VII, 203
House of Representatives —
action on World Court VIII, 210–214; IX, 83
declination of arbitration.....IX, 487
report on immigration and naturalization of Japanese.....VII, 294–297
resolution on discriminatory treatment of Jews in Russia.....VII, 303
Hygienic Laboratory.....VII, 22
immigration —
act of 1917.....VII, 321
act of 1924.....VII, 367–370
barred zone clause.....VII, 302
definition of "immigrants"...VII, 376–377
"domestic question".....VII, 324–327
foreign-born Japanese.....VII, 284
from Japan, 1920–1923.....VII, 291
treaties.....VII, 319–324
increase in total population, 1910–1920 VII, 284
increase of Japanese population in...VII, 284
Indian population, decline of.....VII, 284
instruction to delegates at Second Hague Conference.....IX, 472
international disputes, policy on.....IX, 554
international prize court.....IX, 475
invitation to conference of signatories on the World Court.....IX, 619
Isthmian canal route across Nicaragua IX, 547
Japanese emigration to.....VII, 281
Japanese exclusion law of 1924 —
bill in conference.....VII, 309–310
effect of Hanihara letter.....VII, 307–309
House report 350.....VII, 294–297
letter of Secretary Hughes to Senator Colt.....VII, 357
reply of Secretary Hughes to Hanihara note, April 10, 1924.....VII, 362
terms of.....VII, 313
Japanese ineligible for naturalization VII, 292
Japanese policy compared with that of British Empire.....VII, 341

PAGE

United States — Continued.
Japanese protest of May 31, 1925, on exclusion act.....VII, 372–375
Japanese residents in.....VII, 283
Jay treaty —
arbitration provisions in...IX, 479, 480, 481
arbitrations under.....IX, 481–484
beginning of modern arbitration...IX, 479
commissions under.....IX, 482
convention annulling Art. VI.....IX, 484
secession of commissioners.....IX, 483
King-Crane mission to Near East...VII, 576
Lausanne Conference —
American citizens subject to American tribunals outside Turkey in certain matters.....VII, 593
capitulations, maintenance of.....VII, 581
character of American representation VII, 583–584
Chester concessions.....VII, 586
commercial enterprise, freedom of VII, 581, 598
concessions, adjustment of.....VII, 580
declaration relating to administration of justice.....VII, 600–601
exemption from military service of respective nationals.....VII, 594
freedom of the Straits...VII, 581, 590, 598
indemnity for losses to Americans VII, 581, 587
minorities, protection of.....VII, 581, 589
Open Door policy.....VII, 582, 589
opportunity for archæological research and study.....VII, 581, 587
personal status and family law.....VII, 598
problems of.....VII, 579–586
protection of religious and philanthropic institutions.....VII, 581, 588, 598
purposes of participation.....VII, 583–584
statements.....VII, 585–586
League of Nations —
accredited representatives to..VII, 105–106
cooperation with.....VII, 1–26
participation of Americans in work of VII, 106–111
relation to.....VII, 7–8
letter from the delegation to the president of the Second Opium Conference VIII, 166
letter of Charles E. Hughes relative to "gentlemen's agreement".....VII, 348
letter of Mar. 29, 1926, from Secretary-General of the League of Nations IX, 618
letter of Secretary Kellogg on allocation of reparation payments....VIII, 265–266
maintenance of troops in occupied territories.....VIII, 267
mandate for Armenia proposed.....VII, 577
mandated territories, treaties on.....VII, 24

PAGE

United States — Continued.
member of Second Opium Conference VIII, 192
memorandum of January 23, 1911, to Japan ..... VII, 379
Mexico —
Commissioners on American rights IX, 373
demand of indemnification in cash by Mexico for rights ..... IX, 367
instructions to commissioners ..... IX, 365
note of Mr. Summerlin to Señor Pani, Apr. 20, 1922 ..... IX, 357
payment for lands by bonds refused by U. S. ..... IX, 368
policy of Harding Administration .. IX, 352
reply of Mexican Commissioners ... IX, 368
reply of Señor Pani on May 4, 1922, to Mr. Summerlin's note ..... IX, 357
understandings of American-Mexican commissioners on petroleum problem ..... IX, 422
on subsoil problem ..... IX, 422
United States-Mexican Commission IX, 365–375
agrarian discussions ..... IX, 366–371
claims conventions ..... IX, 374
nationalization of subsoil deposits IX, 371–373
military intervention in Turkey ..... VII, 572
military preparedness ..... IX, 552
Mixed Claims Commission ..... VIII, 279
narcotic drugs traffic ..... VIII, 138
native-born Japanese in ..... VII, 283
naturalized Japanese in ..... VII, 283
Naval Affairs, Committee on:
appropriation bill, 1916 ..... IX, 554
building program, 1916 ..... IX, 553
naval station on Fonseca Bay, Nicaragua IX, 548
Near East commissions ..... VII, 576
négotiation of separate treaty with Turkey VII, 591
negro population ..... VII, 284
net American claim for army costs ... VIII, 268
nonmember of League of Nations VII, 105; VIII, 381; IX, 157
note of American Chargé d'affaires at Bern to Secretary-General of League IX, 621
note of April 17, 1924, from Japan on immigration ..... VII, 364–365
note of Minister Pani of Mexico, Feb. 9, 1922 ..... IX, 355
note of Secretary of State to Secretary-General of League of Nations, Mar. 2, 1926 ..... IX, 617
note to Mexico on Mar. 9, 1926, on religious regulations ..... IX, 400
objections to Mexican petroleum law .. IX, 382
occupation of Coblenz sector ..... VIII, 267

PAGE

United States — Continued.
"official observer" at Second General Conference on Communications and Transit ..... VIII, 526
official representation at conferences under League of Nations ... VII, 25, 211
opium —
appointment of committee to study proposals ..... VIII, 99
attitude toward other states in *re* Hague convention of 1912 ..... VIII, 96
interpretation of Hague convention of 1912 ..... VIII, 79
investigation of traffic ..... VIII, 138
per capita consumption ..... VIII, 107
Permanent Central Board ..... VIII, 117
reply to questionnaire of League of Nations on ..... VII, 196
resolution accepted at 5th session Advisory Committee ..... VIII, 81
resolution on limitation of opium production ..... VIII, 138–141
suggestions for control of production VIII, 86
opium conferences —
action of American delegation .... VIII, 557
coca leaves, definition of ..... VIII, 145
consideration of proposals by ..... VIII, 106
cooperation with League of Nations VIII, 555
failure of proposals at ..... VIII, 114–115
memorandum on reasons for withdrawal from ..... VIII, 166–168
nonparticipation in opium anti-smoking conference ..... VIII, 87
policy ..... VIII, 78
position on subcommittee ..... VIII, 111
principles stated at Geneva ..... VIII, 81
reservations ..... VIII, 159
statement of Bishop Brent ... VIII, 159–165
suggestion that heroin be prohibited VIII, 102–103
suggestions ..... VIII, 144–152
uncompromising attitude ..... VIII, 112
withdrawal of American delegation from Second Opium Conference VIII, 99, 111–114
outstanding facts in controversy with Mexico ..... IX, 395–398
pacific settlement *vs.* competitive armament ..... IX, 553
Paris Financial Agreement, an executive understanding ..... VIII, 275
participation in international conference on customs formalities ..... VII, 218
participation in mixed commission for determination of German reparation, VIII, 269
participation in work of Reparation Commission ..... VIII, 228

PAGE

United States — Continued.
peace movement, beginning of . . . IX, 485
percentage of increase in Japanese population . . . VII, 284
percentage of Japanese of American birth VII, 283
Pershing expedition to Mexico . . . IX, 346
population density . . . VII, 282
Porter resolution on limitation of opium production . . . VIII, 138–141
present relations with Turkey . . VII, 595–596
President Coolidge's statement regarding immigration act of 1924 . . . VII, 371
privileges under capitulations in Turkey VII, 566–567
procedure for arbitration of international disputes . . . VII, 51–53
proposal of action on Permanent Court of International Justice . . . VIII, 584
protest of Secretary of State Hughes against Japanese exclusion . . VII, 353–356
protest of settlement of Japanese immigration by treaty . . . VII, 310–311
protest on religious regulations of Mexico IX, 399
protocol of 1874 with Turkey VII, 566, 595, 599
provisions of Mexican land law IX, 390–398, 403
provisions of treaty of 1830 with Turkey VII, 566
Public Health Service . . . VII, 22
public opinion on Japanese exclusion law VII, 316–318
recognition of Obregón Government of Mexico . . . IX, 351, 353, 354
reference as "trustee" in German note Feb. 9, 1925 . . . IX, 33, 41
refusal of Mexican proposals, Feb. 6, 1922 IX, 355
refusal to accept abrogation of capitulations in Turkey . . . VII, 569
refusal to name delegate to conference of World Court signatories . . . IX, 622
reimbursement for army costs . . . VIII, 267
relation to League in *re* 1912 Opium Convention . . . VII, 17
relations with Mexico . . . IX, 375
relations with other nations —
discussed by Elihu Root . . . VIII, 199–206
relations with Turkey . . . VII, 565–603
reparation —
American interest in division of annuities . . . VIII, 274
American military claims . . . VIII, 272
arbitration of disputes under Experts' plan . . . VIII, 318
categories of claims . . . VIII, 269
claim on army costs . . . VIII, 266
claims . . . VIII, 271–273

PAGE

United States — Continued.
debts owed American citizens by German nationals . . . VIII, 269
desire to share in Bulgarian payments VIII, 274–275
discussion with Allies on army costs VIII, 279
nonparticipation in clearing office system . . . VIII, 271
official "unofficial observer" on commission . . . VIII, 307
participation in plan annuities . . . VIII, 273
participation of an American citizen in deliberations on Experts' plan VIII, 263
cessation of office of United States officially represented . . . VIII, 263
payments Nov. 11, 1918–Feb. 28, 1925 VIII, 295–296
release of receipts under Wadsworth agreement . . . VIII, 280
share in Dawes annuities . . . VIII, 279–280
reply of April 18, 1924, to Japan on immigration . . . VII, 365–366
reply of May 31, 1924, to Japanese protest on exclusion act . . . VII, 376–380
reports of Harbord commission . . . VII, 576
representation at Paris Financial Conference . . . VIII, 267
Republican plank on World Court . . VIII, 216
reservations on World Court VIII, 207–214; IX, 517, 615–617
resolution —
of Congress on control of opium . . VIII, 75
of Mar. 2, 1923, on opium convention VIII, 78
on adhesion of U. S. to Protocol of Dec. 16, 1920, with reservations . . IX, 615–617
restrictions on nationals holding land in Mexico . . . IX, 390, 403
results of noncooperation with other states VII, 524–525
Rhineland agreement, June 28, 1919, not party to . . . VIII, 267
rights and interests in Turkey during World War . . . VII, 570–573
rights in Turkey in 1914 . . . VII, 565
St. Croix river boundary . . . IX, 481
Secretary of State Olney's arguments on arbitration treaty . . . IX, 502
seizure of Vera Cruz . . . IX, 343
Senate —
action on treaties for advancement of peace . . . IX, 537
action on World Court . . . IX, 83
amendments to arbitration treaty of 1897 . . . IX, 508
attitude on 1904 arbitration treaties IX, 516
attitude on St. Croix river boundary IX, 481

PAGE

United States — Continued.
Committee on Foreign Relations VII, 9; IX, 488
debate on Anglo-British treaty of 1897 IX, 504
debate on 1911 arbitration treaties IX, 529
Foote resolution on arbitration....IX, 489
Jay treaty of 1794, action on.....IX, 480
letter of President Roosevelt to Senator Cullom.....IX, 520
majority report on 1911 treaty with France.....IX, 531
Nelson motion on treaty of 1897....IX, 505
proceedings on 1911 arbitration treaties IX, 532
ratification of *Alabama* claims treaty IX, 494
report on Underwood resolution...IX, 489
resolutions on arbitration.....IX, 487–492
Sherman resolution of 1888.....IX, 499
subcommittee on hearings on Permanent Court of International Justice VII, 33–93
sequestration of property during World War.....VIII, 268
signatory of financial agreement, Jan. 14, 1925.....VIII, 274
special claims convention with Mexico arising from revolutionary acts..IX, 436
statement of Charles E. Hughes on American treaty of Lausanne.....VII, 596
summary of treaty of amity and commerce with Turkey.....VII, 597–600
Supreme Court cases relative to Japanese immigrants.....VII, 345–352
suspension by Turkey of treaty rights VII, 572–573
Swanson resolution on World Court VIII, 207–208
Tariff Act of March 3, 1905.....VIII, 58
telegram of Secretary Lansing to Walter Thurston on rights of Americans in Mexico.....IX, 412
text of "gentlemen's agreement"....VII, 342
treaties —
December 13, 1921, on insular possessions in Pacific.....VII, 325
for advancement of peace.....IX, 534
Germany, Aug. 25, 1921.....VIII, 268, 272
Great Britain, Nov. 19, 1794.....IX, 479
in force with Turkey.....VII, 595
Japan, 1894.....VII, 289
Lausanne.....VII, 592–595
proposed to Mexico May 27, 1921..IX, 351
registered with League of Nations..VII, 14
repression of obscene publications of May 4, 1910.....VII, 15
Ruanda-Urundi with Belgium.....VII, 24
Syria and the Lebanon.....VII, 24
termination of 1832 treaty with Russia VII, 303

PAGE

United States — Continued.
text of, Guatemala, Sept. 20, 1913..IX, 536
Togoland and Cameroons with France VII, 24
Turkey, 1830.....VII, 595–596
Turkey, August 6, 1923.....VII, 565–603
treaty-making power interpreted VII, 321–323
Turkey severs diplomatic relations...VII, 571
unrepresented at Locarno Conference IX, 21
Vera Cruz, occupation of.....IX, 486, 487
visé fees.....VII, 212
Wadsworth agreement on army costs VIII, 268, 270, 272, 274, 280
waiving of citizenship in *re* property holding in Mexico IX, 377, 380–383, 405, 412, 415
waiving of claims under Wadsworth agreement of May 25, 1923.....VIII, 280
wartime relations with Bulgaria.....VII, 572
Webster-Ashburton treaty.....IX, 482
World Court —
action of Senate on protocol..VIII, 207–216
reservations on....VIII, 207–214; IX, 570
Yap, treaty on.....VII, 24
"The United States and the Philippines" by D. R. Williams.....VIII, 20
United States Tariff Commission.....VIII, 22
Universal Postal Union.....VIII, 74; IX, 582
Universal Sanitary Convention, Rome, Dec. 9, 1907.....VIII, 495
University Information Office, the International.....VII, 228
Upper Silesia:
boundary line fixed.....VII, 12
convention, publication of.....VII, 172–173
dispute.....VII, 170–173
Geneva convention.....IX, 577
German interests in Polish VIII, 432–434; IX, 126–128
minorities protection.....VII, 241
social insurance funds.....IX, 217
Urda Pelleta, A. Florez.....IX, 171
Urquida, John.....IX, 424
Urrutia, Dr. Francisco José VII, 148, 208; VIII, 524
Uruguay:
arbitration settlements.....IX, 476
arbitration treaties —
Argentina, 1899, 1923.....IX, 589, 596
Bolivia, 1917.....IX, 594
Brazil, 1923.....IX, 596
Chile, 1915, 1923.....IX, 594, 596
Colombia, 1918, 1923.....IX, 595, 596
Cuba, 1923.....IX, 596
Dominican Republic, 1923.....IX, 596
Ecuador, 1923.....IX, 596
France, 1918.....IX, 595
Great Britain, 1918.....IX, 594
Guatemala, 1923.....IX, 596

PAGE

Uruguay — Continued.
Haiti, 1923 ..... IX, 596
Honduras, 1923 ..... IX, 596
Italy, 1914 ..... IX, 594
Nicaragua, 1923 ..... IX, 596
Panama, 1923 ..... IX, 596
Paraguay, 1883, 1918, 1923 IX, 588, 595, 596
Peru, 1917 ..... IX, 594
Salvador, 1924 ..... IX, 597
Spain, 1902, 1922 ..... IX, 590, 596
Sweden, 1923 ..... IX, 596
United States, 1909, 1914, 1923 IX, 523, 591, 593, 596
Venezuela, 1923 ..... IX, 596
Asiatic immigration prohibited ..... VII, 332
attitude on Protocol for Pacific Settlement ..... IX, 179
budget unit of League of Nations ... VIII, 406
commission of inquiry —
treaty with United States, 1914 .... IX, 544
member —
conference of signatories to Protocol of Signature of Court ..... IX, 627
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice ..... VIII, 581
Second Opium Conference ..... VIII, 192
optional clause of World Court signed IX, 567
declaration ..... IX, 644
signatory of protocol of World Court . IX, 567
Urwick, Sir Thomas ..... VIII, 307

Vacaresco, Hélène ..... IX, 298
Valdes, Ismael ..... IX, 303
Valéry, Paul ..... IX, 298
Valloton, M ..... IX, 468
Valcinek, Dr. ..... VIII, 515; IX, 277
Valvanne, Hugo ..... VIII, 620
Van Asbeck, Baron F. M ..... IX, 626
Vandervelde, Emile ..... IX, 155
Van Eysinga, W. J. M ..... IX, 160, 626
Van Hamel, Joost A.
VII, 120, 553; VIII, 401, 619; IX, 333
Van Troostwyk, W. Doude ..... IX, 643
Varadhara, Akharaj ..... VIII, 128, 130
Varlez, Louis VII, 143; VIII, 592; IX, 303
Vasconcellos, Dr. Augusto de ..... IX, 627, 638
Vasaliadis, Capt ..... IX, 209
Velghe, Dr. O. ... VII, 202; VIII, 497, 499, 506, 507, 508

Venezuela:
arbitration —
blockading powers preference ..... IX, 468
claims of "Orinoco" company ..... IX, 468
constitution provides for ..... IX, 459
arbitration settlements ..... IX, 476

PAGE

Venezuela — Continued.
arbitration treaties —
Argentina, 1911, 1923 ..... IX, 592, 596
Belgium, 1884 ..... IX, 588
Bolivia, 1919 ..... IX, 595
Brazil, 1909, 1923 ..... IX, 591, 596
Chile, 1923 ..... IX, 596
Colombia, 1842, 1923 ..... IX, 587, 596
Cuba, 1923 ..... IX, 596
Dominican Republic, 1923 ..... IX, 596
Ecuador, 1921, 1923 ..... IX, 596
Guatemala, 1923 ..... IX, 596
Haiti, 1923 ..... IX, 596
Honduras, 1923 ..... IX, 596
Nicaragua, 1923 ..... IX, 596
Panama, 1923 ..... IX, 596
Paraguay, 1923 ..... IX, 596
Peru, 1912, 1923 ..... IX, 593, 596
Salvador, 1883 ..... IX, 588
Spain, 1882 ..... IX, 588
United States, 1914, 1923 ..... IX, 593, 596
Uruguay, 1923 ..... IX, 596
boundary controversy ..... IX, 500
budget unit of League of Nations .... VIII, 406
commission of inquiry —
treaty with United States, 1914 .... IX, 544
member —
conference of states signatories to Protocol of Signature of Court ..... IX, 627
International Labor Organization VII, 138; VIII, 585
League of Nations VII, 104; VIII, 380; IX, 142
Permanent Court of International Justice ..... VIII, 581
Second Opium Conference ..... VIII, 192
non-European immigration restricted VII, 332
permanent delegate to League VIII, 621; IX, 156
population density ..... VII, 282
signatory of protocol of World Court .. IX, 567
Venizelos, Eleftherios ..... VII, 102; VIII, 574
Vermaire, Charles G.
VIII, 189, 191, 194; IX, 626, 637
Versailles, treaty of:
Art. 104 relative to postal communication between Poland and Danzig IX, 125
Art. 380 on Kiel Canal ..... VIII, 345
Art. 389, nomination of delegates to International Labor Conferences VIII, 336
Arts. 428 and 429 ..... IX, 6
clearing offices under ..... IX, 578
expiration of Arts. 272–274 ..... VIII, 319
nonratification by United States VIII, 268, 270
preservation of Allied rights under .. VIII, 264
signatories ..... VII, 542
Versegh, Alex Nagy de ..... VIII, 620

PAGE
Vesnich, Milenko R.....VII, 102
Veverka, Ferdinand VIII, 467, 620; IX, 160, 238
Veyga, Franc. de.....VIII, 133, 135
Vezensky, M.....VIII, 575; IX, 327
Vicuña, Rivas.....VII, 256
Vienna, Congress of.....IX, 459
Vienna, treaty of, 1815.....IX, 457
Vigier, E. H. R..VII, 121; VIII, 402; IX, 167
Vigo, Santiago Mendez de.....VIII, 137
Villa, Francisco.....IX, 343, 344
Villalonga, J. de.....VII, 143; IX, 297
Villegas, E.....VII, 148, 553; VIII, 619
Vincent, Sir William H. H.....IX, 625, 637
Vincent, Stenio.....VIII, 133
Violette, Lieut.....IX, 470
Viple, N.....VII, 143; VIII, 592
Visarnvaja, Luang Sri.....IX, 306
Visscher, Charles de....VIII, 422; IX, 187, 188
Viti de Marco, Marquis A. de.....VII, 148
Viviani, René.....VII, 148; IX, 17
Voegtlin, Dr. Carl.....VII, 23, 107; VIII, 386
Vogel, Mr.....VII, 209
Vogt, M.....VIII, 326; IX, 468
Vrioni, Ilias.....VII, 173; VIII, 434; IX, 624
Vysockis, R.....VIII, 532

Waddington, Luis.....VIII, 404
Wadsworth, Dr.....VII, 23
Wadsworth, Eliot.....VIII, 268
Wadsworth, James W., Jr.....VII, 39
Waelbroeck, Pierre.....VII, 143
Wagemann, Mr.....VIII, 521
Wait, C. B.....VII, 15, 105; VIII, 383
Walko, M.....IX, 229
Wallace, Edgar, statement on Permanent Court in behalf of American Federation of Labor.....VII, 33, 92–93
Wallenberg, Marcus VII, 215; VIII, 307, 324, 511
Walsh, Thomas J.....VII, 39; IX, 538
Walters, Dr. Michel.....VIII, 620
Walton, J. C.....VIII, 106, 113
Wambaugh, Eugene.....IX, 543
Wambaugh, Sarah.....VII, 10, 110; VIII, 389
Wang Chung Hui...VII, 87, 127; VIII, 422, 582; IX, 187, 188
War:
abolition of.....IX, 36
ban on.....VII, 397
education against.....VII, 44
outlawry of.....VII, 483, 518
Ward, E. M...VII, 121; VIII, 402; IX, 167
Warren, Charles Beecher IX, 343, 365, 366, 367, 368, 376, 431, 435
Warsaw Conference, see European Anti-Epidemic Conference.
"The Washington Conference" by Raymond Leslie Buell.....VIII, 33
Washington naval treaty, extension of principles of.....VII, 152–153

PAGE
Waterman, Dr.....VIII, 386
Waterways, see Communications and Transit.
Watier, Pierre Henri.....VIII, 530, 531
Watterson, P. G..VII, 121; VIII, 402; IX, 167
Weale, B. L. Putnam.....VIII, 15
Wei, Dr. S. Tcheou.....VIII, 621
Weingartner, Felix.....IX, 293
Weiss, Charles André VII, 86, 127; VIII, 342, 582
Welch, Dr. William H.....VIII, 388, 505
Wellesley, Victor.....IX, 52
Welps, Peter.....IX, 626
Werner, Georges.....VIII, 566
"Western Civilization and the Far East" by Stephen King-Hall.....VIII, 31
"Western Races and the World" by Francis Sydney Marvin.....VIII, 29
Wettum, W. G. Van.....VII, 195, 198; VIII, 169, 172, 139, 191, 194, 553; IX, 306
"What the Protocol Does" by Manley O. Hudson.....VII, 391–400
"White Australia".....VIII, 26
"White Capital and Coloured Labour" by Sydney Olivier.....VIII, 23
White, Dr. F. Norman..VII, 203, 501; IX, 253
White, Thomas Raeburn.....VII, 34
White, William Allen.....VII, 36
White slave traffic.....VII, 18–19
Whitton, Charlotte.....IX, 303
Wiart, Carton de.....VII, 245; IX, 232, 303
Wickersham, George W.....VII, 47–67, 317; VIII, 421; IX, 187, 188
Widding, Karl Marius VII, 242; VIII, 573; IX, 320
Wiehl, Dorothy.....VII, 10, 107; VIII, 386
Wiehl, E.....VIII, 237
Wieniawski, Antoine.....VII, 215; VIII, 467, 469, 511, 521; IX, 238
Wigmore, John H.....VII, 16, 103; VIII, 387
Wigram, Ralph F.....VIII, 237
Wilbur, Ray Lyman.....VII, 36; VIII, 5
Williams, D. R.....VIII, 20
Williams, Edward T.....VIII, 11
Williams, John Sharp.....IX, 532
Williams, Laurence Frederic Rushbrook VIII, 13
Williams, N.....VIII, 402; IX, 167
Williams, Talcott.....VII, 554
Willis, Frank B.....VII, 39; VIII, 209
Willoughby, Westel Woodbury.....VIII, 13
Wilson, Edwin B.....VIII, 386, 503
Wilson, Florence, librarian of League of Nations.....VII, 10, 16, 110, 121; VIII, 339, 402; IX, 167
Wilson, James F.....IX, 493
Wilson, William B.....VII, 11, 292
Wilson, Woodrow, see President of the United States.

PAGE

Wilson-Bryan treaties.....IX, 557
Wimbledon, S.S., case decided by Permanent Court of International Justice VII, 127–129
Winiarski, Bohdan....VII, 208; VIII, 524, 532
Winslow, Capt. Alan.....VII, 14, 105; VIII, 384; IX, 621
Winslow, Dr. Charles-Edward A.....VII, 21, 107; VIII, 386
Winslow, L. Lanier.....IX, 424
Winthrop, Robert C.....IX, 488
Wireless, conference on .....VII, 212
Wirsen, M. de .....VIII, 450
"Wise Men from the East and from the West" by Abraham Mitrie Rihbany VIII, 32
Wolf, Mrs. Alexander.....VII, 35
Wolf, Lucien .....IX, 291
Wolf, Paul .....VIII, 533
Women and children in the Near East, deportation of .....VII, 19
Women and children, traffic in ...VII, 220–221; VIII, 544–551; IX, 302–306
see also League of Nations.
Women's International League for Peace and Freedom.....IX, 302
Women's World Court Committee.....VII, 34
"The Wood-Forbes Report".....VIII, 20
Woodford, Stewart L.....IX, 495
Woodhouse, M. S.....VII, 34
Woods, Cyrus E.....VII, 313
Worcester, Dean Conant.....VIII, 12
"The Work of the Permanent Court of International Justice during its First Three Years" by Manley O. Hudson.....VIII, 329–374
"The Work of the Permanent Court of International Justice during Four Years" by Manley O. Hudson IX, 77–130
World Alliance for International Friendship through the Churches .....VII, 34
World Court, see Court of International Justice, the Permanent

PAGE

World Court Congress.....IX, 534
World Peace Foundation.....VII, 35
World's Young Women's Christian Association.....IX, 302
Worley, H. I.....VII, 15, 105; VIII, 388
Wrangel, Capt. E. W. H. de.....VII, 147; VIII, 464
Wrede, Baron Gustave.....VIII, 531
Wright, Dr. C. T. Hagbert.....IX, 299
Wright, Hamilton Mercer VIII, 12, 127, 130, 133
Wright, Mrs. Hamilton VII, 17, 110, 195; VIII, 100, 384, 389, 553
Wright, Harold.....VIII, 24
Wu Lien-Teh.....VIII, 133
Wuarin, Albert.....VIII, 363
Würtemberg, Baron Marks von.....VIII, 420
Wurzburger, E.....VIII, 507; IX, 274

Yamanaka, H. Chiyuki.....VIII, 491
Yanaghita, Kunio.....VII, 235
Yap, island of.....VII, 24
Yasutomi, Capt. M.....VII, 146; VIII, 464
Yen, W. W.....VIII, 133, 135
Yoshida, Isaburo.....IX, 626, 637
Young, Allyn A.....VII, 16, 108; VIII, 387
Young, Owen D.....VIII, 308
Young Men's Christian Association....VII, 20
Young Women's Christian Association..VII, 34
Yovanovich, Mikhailo.....VII, 127; IX, 229
Yovanovitch, Milutin.....VII, 195; VIII, 553

Zahle, Herluf.....VIII, 101, 194, 403, 404
Zanetti, Dr. J. Enrique VII, 14, 109; VIII, 388
Zanzibar, arbitration settlements.....IX, 476
Zaunius, Dr. Dovas.....VIII, 620; IX, 324
Zeligowski, Genl.....VII, 167, 168; VIII, 428
Zerbi, Capt.....IX, 470
Zimmerman, Dr. Albert....VII, 187; VIII, 453
Zimmern, Alfred Eckhard.....IX, 297
Zinsser, Dr. Hans.....VII, 22, 108; VIII, 387
Zionist Organization.....VIII, 359; IX, 252
Zumeta, César.....IX, 161, 627, 638

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22